

In The
Supreme Court of the United States

October Term, 1992

TERESA HARRIS,

Petitioner,

vs.

FORKLIFT SYSTEMS, INC.,

Respondent.

On Writ of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

JOINT APPENDIX

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Forklift Systems, Inc.*

**Petition for Writ of Certiorari Filed December 15, 1992
Certiorari Granted March 1, 1993**

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R. 1	July 7, 1989	Complaint
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R. 40*	November 27, 1990	Magistrate's Report and Recommendation

* Printed in the Petition for Writ of Certiorari

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

TERESA HARRIS,)	
)	
Plaintiff)	No. <u>389 0557</u>
vs.)	JUDGE NIXON
)	
FORKLIFT SYSTEMS, INC.,)	
)	
Defendant)	

COMPLAINT

(Filed July 7, 1989)

Jurisdiction and Venue

1. This Complaint is an action for declaratory, injunctive and other appropriate relief, including back pay, costs, and attorney's fees, to redress the deprivation of rights secured by the Plaintiff by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e), *et seq.* (hereinafter Title VII).

2. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by Title VII providing for injunctive and other relief against discrimination in employment on the basis of sex. This Court has jurisdiction of this action under 42 U.S.C. §2000(e)-5(f)(3).

Parties

3. Plaintiff, Teresa Harris, is a female citizen of the United States and the State of Tennessee. At all times material herein, Plaintiff has been a resident of Davidson

County, Tennessee and has resided in the judicial district of this Court. Plaintiff was an active employee of the Defendant Forklift Systems, Inc. from the date of her employment in April, 1985 until October, 1987.

4. Defendant Forklift Systems, Inc. (hereinafter "Defendant" or "Forklift") is a Tennessee corporation with its principal place of business at 884 Elm Hill Pike, Nashville, Tennessee. Defendant is in the business of selling, leasing and repairing forklift machines. Defendant is an employer within the meaning of 42 U.S.C. §2000(e)-(b).

Administrative Procedure

5. Within one hundred eighty (180) days of the occurrence of the acts set forth herein, charges of employment discrimination were filed by Plaintiff herein against Defendant, a copy of which is attached hereto as Exhibit A.

6. On April 10, 1989, "Notice of Right to Sue" was issued from the District Office of the Equal Employment Opportunity Commission (a copy of which is attached hereto as Exhibit B), entitling her to institute a civil action in the appropriate Federal District Court within ninety (90) days of the date of receipt of said notice.

Factual Allegations

7. Plaintiff was employed by Defendant effective April 22, 1985. She was initially assigned responsibility for management of leased equipment and sales coordinator for the sales department.

8. As of the date of her employment, the Defendant employed six managers in addition to the Defendant owner, Charles Hardy. Of the six managers, four were male. The remaining female manager was Charles Hardy's daughter.

9. According to the Defendant's personnel handbook, all employees are to be evaluated on an annual basis.

10. Plaintiff did not receive any evaluation of her job performance in 1987 as contemplated by the Defendant's personnel policies.

11. Plaintiff alleges on information and belief that the male managers received a job performance evaluation in 1987.

12. Plaintiff was the object of a continuing pattern of sexual harassment and derogatory conduct from Charles Hardy, President of Forklift Systems, Inc., including but not limited to the following:

(a) Charles Hardy stated to Plaintiff in the presence of other employees of Defendant, "You're a woman, what do you know?" on a number of occasions during the period of Plaintiff's employment, and "You're a dumb-ass woman" at least once.

(b) Charles Hardy, on a number of occasions, stated to Plaintiff in the presence of other employees of Defendant, "We need a man as rental manager."

(c) Charles Hardy, in front of a group of other employees of Defendant and the Nissan

factory representative stated, "Let's go to the Holiday Inn to negotiate your raise."

(d) Charles Hardy has asked Plaintiff and other female employees but not male employees of Defendant to retrieve quarters from his front pants pocket.

(e) Charles Hardy has thrown objects on the ground in front of Plaintiff and other female employees of Defendant but not male employees and asked them to pick the object up thereafter making comments about female employees' attire.

(f) Charles Hardy, on one occasion, asked Plaintiff in front of other employees of Defendant, "What did you do, promise the guy at ASI (Alladin Synergetics, Incorporated) some bugger Saturday night?"

(g) Charles Hardy commented with sexual innuendos [sic] about clothing worn by Plaintiff and other female employees but not male employees of Defendant.

13. The acts alleged in paragraph 12 were directed to Plaintiff because she was a female.

14. The acts of Defendant by and through Charles Hardy interfered with Plaintiff's work and caused Plaintiff to suffer lack of self-esteem, and physical and emotional distress.

15. On or about August 17, 1987, Plaintiff met with Charles Hardy to complain to him of the acts set forth herein.

16. During the course of said meeting Charles Hardy admitted to many of the actions, stated they were only "jokes," and promised they would not be repeated.

17. Sometime thereafter the actions complained of by Plaintiff to Charles Hardy as alleged herein commenced again.

18. The acts of Charles Hardy created a hostile work environment characterized by sexual harassment.

19. On or about October 1, 1987, Plaintiff ceased her employment with Defendant because of the hostile work environment created by the sexual harassment of Charles Hardy.

Prayer for Relief

WHEREFORE, Plaintiff respectfully prays the Court to:

1. Issue this Complaint and require the Defendant to answer within the time prescribed by law;

2. Issue a declaratory judgment that Defendant's acts, practices and procedures complained of herein violated Plaintiff's right as secured under Title VII;

3. Grant Plaintiff a permanent injunction enjoining Defendant, its officers, agents, successors, employees, attorneys, assigns and other representatives, and all those acting in concert or participation with them and at their direction, from engaging in any employment policy or practice shown to discriminate against the Plaintiff, in violation of Title VII, on the basis of sex;

4. Grant Plaintiff back pay, reinstatement and reimbursement for lost fringe benefits, training and promotional opportunities and other appropriate relief to redress the discriminatory practices complained of herein;

5. Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law;

6. Grant Plaintiff her costs, attorney's fees and disbursements; and

7. Grant such additional relief as the Court deems proper and just.

Respectfully submitted,
WOODS & WOODS
A Professional Law
Association

By: /s/ Irwin Venick
Irwin Venick, #4112

121 Seventeenth Avenue South
Nashville, Tennessee 37203
(615) 259-4366

/s/ Lawrence Wilson
LAWRENCE D. WILSON, #

One Burton Hills Boulevard
Suite 220
Nashville, Tennessee 37215
(615) 665-9075

Counsel for Plaintiff

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

TERESA HARRIS, being first duly sworn before the undersigned authority, deposes and says that she is the Plaintiff in the foregoing [sic] action, that she has read the foregoing Complaint and it is true and correct to the best of her knowledge, information and belief.

/s/ Teresa Harris
TERESA HARRIS

Sworn to and subscribed before me this 7 day of July, 1989.

/s/ Karilyn Illegible
Notary Public

My commission expires:

7-18-92

EXHIBIT A

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

ENTER CHARGE NUMBER

FEPA
XX EEOC
DIN0290-88
253-88-0007

TENNESSEE HUMAN RIGHTS COMMISSION and EEOC
(State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.)

Teresa G. Harris

HOME TELEPHONE NO. (Include Area Code)

(615) 331-5784

STREET ADDRESS

5501 Tudor Lane

CITY, STATE AND ZIP CODE

Nashville, Tennessee 37211

COUNTY

Davidson

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATION AGAINST ME (If more than one list below.)

NAME

Forklift Systems

NO. OF EMPLOYEES/MEMBERS

15+

TELEPHONE NUMBER (include Area Code)

(615) 255-6321

STREET ADDRESS

884 Elm Hill Pike

CITY, STATE AND ZIP CODE

Nashville, Tn 37210

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

—
CITY, STATE AND ZIP CODE

—
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

— RACE
— COLOR
XX SEX
— RELIGION
— NATIONAL ORIGIN
— AGE
— RETALIATION
— OTHER (Specify)

DATE MOST RECENT OF CONTINUING
DISCRIMINATION TOOK PLACE

(Month, day, year)

100187

THE PARTICULARS ARE (If additional space is needed,
attached extra sheet(s)):

- I. On October 1, 1987, I was forced to quit my job as a Rental Manager. Prior to quitting, I had been denied performance reviews, subjected to general and sexual harassment by the company's owner and paid upon a different basis from the other managers. I had been employed by the company since April 1985. The company employs more than 15 employees.
- II. I was never given an explanation by the company for having been treated in this manner.
- III. I believe that I was discriminated against because of my sex-Female.

— I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone

number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Date 10/5/87 /s/ Teresa G. Harris
Charging Party (Signatures)

SIGNATURE OF COMPLAINT

/s/ Teresa G. Harris
SUBSCRIBED AND SWORN TO
BEFORE ME THIS DATE
(Day, month, and year)

EXHIBIT B

(SEAL)

STATE OF TENNESSEE
HUMAN RIGHTS COMMISSION
CHATTANOOGA REGIONAL OFFICE
540 McCALLIE AVENUE
6th FLOOR WEST #605
CHATTANOOGA, TENNESSEE 37402
(615) 622-6234

In Reply Refer to:
Charge No:

THRC: DIN-0290-88
EEOC: 253-88-0007

Ms. Teresa G. Harris
5501 Tudor Lane
Nashville, Tennessee 37211

Complainant

Mr. Charles Hardy
FORKLIFT SYSTEMS
884 Elm Hill Pike
Nashville, Tennessee 37210

Respondent

NOTICE OF ADMINISTRATIVE CLOSURE

This is to advise all parties that this case has been administratively closed by this agency as the Complainant has requested an Equal Employment Opportunity Commission (EEOC) Right To Sue Letter.

On Behalf of the Commission:

4-10-89
Date

/s/ W.N. Moore by Illegible
Warren N. Moore,
Executive Director

cc: Mr. Stanley M. Chernau
DENNY, LACKEY AND CHERNAU
218 Third Avenue, North
P. O. Box 3429
Nashville, Tennessee 37219-0429

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

(Issued on Request)

TO: Teresa G. Harris
5501 Tudor Lane
Nashville, TN 37211

— On behalf of a person aggrieved whose identity is
CONFIDENTIAL (29 C.F.R. 1601.7(a)).

FROM:
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1407 UNION AVENUE SUITE 621
MEMPHIS, TN 38104

CHARGE NUMBER
253-88-0007

EEOC REPRESENTATIVE
Vernell C. Neely, Deferral Cord.

TELEPHONE NUMBER
(615) 736-5820

(See the additional information on the reverse side of this form.)

TO THE PERSON AGGRIEVED:

This is your NOTICE OF RIGHT TO SUE. It is issued at your request. If you intend to sue the respondent(s) named in your charge, YOU MUST DO SO WITHIN NINETY (90) DAYS OF YOUR RECEIPT OF THIS NOTICE: OTHERWISE YOUR RIGHT TO SUE IS LOST.

- ☐ More than 180 days have expired since the filing of this charge.
- ☐ Less than 180 days have expired since the filing of this charge, but I have determined that the Commission will be unable to complete its process within 180 days from the filing of the charge.
- ☒ With the issuance of this Notice of Right to Sue, the Commission is terminating its process with respect to this charge.
- ☐ It has been determined that the Commission will continue to investigate your charge.
- ☐ ADEA - While Title VII requires the Commission to issue a Notice of Right to Sue before you can bring suit under that law, you obtained the right to sue under the Age Discrimination in Employment Act (ADEA) when you filed your charge, subject to a 60-day waiting period. ADEA suits must be brought within 2 years (3 years in cases of willful violations) of the alleged discrimination.
- ☐ EPA - While Title VII requires the Commission to issue a Notice of Right to Sue before you can bring suit under that law, you already have the right to sue under the Equal Pay Act (EPA) (you are not required to complain to any enforcement agency before bringing an EPA suit in court). EPA suits must be brought within 2 years (3 years in cases of willful violations) of the alleged EPA underpayment.

An information copy of this Notice of Right to Sue has been sent to the respondent(s) shown below.

On Behalf of the Commission
cc: (to respondent)

☐ Copy of Charge

Mr. Charles Hardy
Forklift Systems
884 Elm Hill Pike
Nashville, TN 37210

/s/ Illegible

TYPED NAME AND TITLE
OF ISSUING OFFICIAL

DATE

W. S. Grabon, District Director

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

TERESA HARRIS,)	
Plaintiff,)	
vs.)	No. 3-89-0557
FORKLIFT SYSTEMS, INC.,)	JUDGE NIXON
Defendant.)	

ANSWER OF DEFENDANT, FORKLIFT SYSTEMS, INC.

Comes the Defendant Forklift Systems, Inc. and would respectfully answer the complaint as follows:

1. Paragraphs 1 through 6 of the complaint are admitted.
2. The allegations of paragraph 7 are admitted except for the allegation that plaintiff acted as a sales coordinator which is denied.
3. The allegations of paragraph 8 and paragraph 9 of the complaint are admitted.
4. The allegations of paragraph 10 are denied because Plaintiff received a job performance evaluation in 1987 just as all other managers received. Defendant would show that this is not a formal process but takes place through an informal discussion by and between the chief executive officer of the corporation and the employee.
5. The allegation in paragraph 11 is admitted due to the fact that all managers, including Plaintiff, did receive a job performance evaluation in 1987.

6. Each and every allegation of the subparagraphs contained in paragraph 12 of the complaint are denied and the substance of each of the allegations contained in said subparagraphs have been dealt with by affidavits filed with the Office of the EEOC by various other employees of Defendant and said affidavits are in the possession of Plaintiff's counsel.

7. The allegation of paragraph 13 is denied as explained in Defendant's answer to paragraph 12 of the complaint.

8. The allegation of paragraph 14 is denied.

9. The allegation of paragraph 15 is denied in that the meeting referred to took place on August 18th, 1987, and was a meeting that took place at the request of Defendants' CEO advising Plaintiff that her attitude in regard to other employees must change or that she would be terminated since her behavior had been both abusive and impolite to her fellow employees.

10. The allegation in paragraph 16 is denied in that it alleges that the meeting of August 17, 1987, was a meeting wherein Mr. Hardy admitted that his actions were only "jokes". Defendant would show that a subsequent meeting was had with Plaintiff and Mr. Hardy and that at this meeting Plaintiff had secretly recorded a conversation had by and between herself and Mr. Hardy and it is the taped transcript of the subsequent meeting, not the August meeting, that Plaintiff obviously refers to.

11. The allegations of paragraphs 17 and 18 are denied.

12. The allegation contained in paragraph 19 is denied and it is respectfully submitted by Defendant that Plaintiff ceased her employment with Defendant not because of a hostile work environment but because of a terminated business relationship by and between the company owned by Plaintiff's husband known as Cellular Power Systems, Inc. and Defendant. Defendant will show by clear and convincing proof that Plaintiff's husband's company, Cellular Power Systems, Inc., had done business with Defendant and that said business was terminated giving rise to two (2) lawsuits filed by Plaintiff's husband's company against Defendant, one of which has been disposed of in the Chancery Court for Davidson County, Tennessee, under Docket Number 87-28-24-1 and the other now pending in the General Sessions Court under Docket Number 89GC20492.

Now having fully answered, this Defendant prays that it be hence dismissed with it's [sic] costs.

Respectfully submitted,

DENNEY, LACKEY & CHERNAU

By: /s/ Stanley M. Chernau
 STANLEY M. CHERNAU
 Sup. Ct. Reg. No. 2390
 218 Third Avenue, North
 P.O. Box 3429
 Nashville, TN 37219-0429
 (615) 244-5480

ATTORNEY FOR DEFENDANT,
 FORKLIFT SYSTEMS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Defendant, Forklift Systems, Inc., was served upon Irwin Venick, Esq., Woods & Woods, 121 17th Avenue, South, Nashville, Tennessee 37203, and upon Lawrence D. Wilson, Esq., 1 Burton Hills Boulevard, Suite 220, Nashville, Tennessee 37215, by United States Mail, First Class, postage prepaid, on the 25th day of July, 1989.

/s/ Stanley M. Chernau
 Stanley M. Chernau

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TERESA HARRIS,)	
)	No. 3:89-0557
Plaintiff)	(Nixon/Sandidge)
vs.)	
)	
FORKLIFT SYSTEMS, INC.,)	
)	
Defendant)	

PRETRIAL ORDER

1. This Court has jurisdiction over this cause pursuant to 42 U.S.C. §2000E-5(f)(3).
2. The pleadings are amended to conform to the Pretrial Order.
3. *Plaintiff's Theory:* The Plaintiff claims that she was constructively discharged by Defendant because of a sexually hostile environment in violation of the Civil Rights Act of 1964, 42 U.S.C. §2000(e). Defendant's President maintained and condoned a workplace environment demeaning to women generally, and Plaintiff in particular.

Plaintiff also claims that Defendant treated Plaintiff differently than it treated males in management positions with regard to the terms and conditions of employment.

The proof will show that Charles Hardy, Defendant's President, threw coins in front of female employees to retrieve, asked female employees to retrieve coins from his front pants pockets, and make sexually suggestive comments about the clothes of female employees.

Mr. Hardy also questioned Plaintiff's ability to be a manager, because of her sex, in manager meetings and had her perform secretarial type duties, neither of which was done with respect to male employees.

Mr. Hardy made a sexually suggestive statement about Plaintiff's raise in front of other males and suggested she offered sexual favors to secure business for the Company.

The hostile environment engendered by Mr. Hardy caused Plaintiff physical illness and anxiety necessitating a physician's care.

The proof will also show that Plaintiff did not receive an annual review in 1987 which other male managers received, did not receive a car allowance comparable to other male managers, did not receive a bonus in 1987 comparable to that of other male managers, was not paid on a comparable basis with other managers, and was told by Mr. Hardy that she made too much money for a woman.

In August, 1987, Plaintiff discussed her complaints about Mr. Hardy's behavior with him during which he stated he would discontinue the objectionable behavior. However, the behavior began again in mid-September, 1987. Plaintiff ceased working at Defendant on October 1, 1987.

4. *Defendant's Theory:* It is Defendant's theory that Plaintiff instituted this action out of vindictiveness arising from a terminated business transaction between her husband and Charles Hardy, CEO of Defendant. It is further Defendant's theory that Plaintiff worked for

Defendant from April, 1985 until October, 1987 during which time she conducted herself in a manner that encouraged and welcomed her being treated as "one of the boys."

Defendant's theory is that Plaintiff worked without complaint or notice of her alleged displeasure in the alleged hostile work environment from April, 1985 until August, 1987, when she secretly taped a conversation with Mr. Hardy wherein she made various complaints, the timing of which coincided with the business conflict between her husband and Mr. Hardy.

Defendant asserts that a friendship existed between the Plaintiff and Mr. and Mrs. Hardy and but for the conflict between Plaintiff's husband and Defendant that arose in 1987 this case would not be before the Court.

5. Stipulation of Facts:

(a) Plaintiff was employed by Defendant from April 22, 1985 through October 1, 1987.

(b) Plaintiff was a rental manager.

(c) Of the managers employed by Defendant between April, 1985 and October, 1987, four were male: John Garrett, David Matthews, Mike Moseley, and Dick Read; and two were female: Teresa Harris and Kathy Kernell. Kathy Kernell is Charles Hardy's daughter.

(d) Charles Hardy was the President of Forklift Systems, Inc. during the period April 22, 1985 through October 1, 1987.

(e) Plaintiff ceased employment with Forklift Systems, Inc. on October 1, 1987.

(f) Defendant did not have a sexual harassment policy in effect between April 22, 1985 and October 1, 1987.

(g) The personnel files maintained by the Defendant are authentic.

(h) The payroll records maintained by the Defendant are authentic.

(i) Forklift Systems, Inc. and Forklift Leasing Corporation, Inc. are related companies of which Charles Hardy is majority shareholder. Forklift Leasing Corporation, Inc. holds title to equipment used and/or leased by Forklift Systems, Inc.

(j) Income and expenses attributable to the leasing and rental business of Forklift Systems, Inc. were included in the financial statements of both Forklift Systems, Inc. and Forklift Leasing Corporation, Inc.

(k) The rental/leasing managers of Defendant and their respective periods of employment are:

May 2, 1984- June 1, 1984	Jay Jackson
Sometime between/ June, 1984 and April, 1985	Tom Means
April, 1985- September, 1987	Teresa Harris
October, 1987- December, 1987	Gary Watson
December, 1987- March, 1988	Roseanne Salisbury

March, 1988-Present Mike Moseley

(l) Other managerial level staff of Defendant, their positions and the terms of their respective positions are:

Service Manager:

Mike Moseley December 1, 1981-March, 1988

Office Manager:

Kathy Kernell March, 1985-January, 1988

Parts Manager:

John Garrett July 11, 1984-September 12, 1986

David Matthews August 15, 1986-November, 1989

Joe Sullivan November, 1989-Present

Sales Manager:

Dick Read December 15, 1986-April 15, 1988

Comptroller:

Bennie Lawson December 1, 1982-April, 1989

Jeff Mayfield April 1, 1989-November 1, 1989

Kathy Kernell November 1, 1989-

(m) Teresa Harris' initial compensation arrangements was salary of \$1,000, auto reimbursement of 18 cents per mile and commission on sales and leasing as follows:

\$0 - \$20,000 2%

\$20,000 - \$35,000 3%

\$35,000 + 4%

(n) In June, 1986, Teresa Harris' salary was increased to \$1,200 per month.

(o) Jay Jackson's compensation arrangement as of January 1, 1988 provided for a commission of 4% on rentals he was responsible for.

(p) John Garrett's salary as Parts Manager effective January 1, 1985, was \$1,800 per month plus 10% of gross profit from the Oscar Mayer account. His salary was increased to \$2,000 per month plus commission as of June 1, 1985.

(q) Effective November 1, 1984, Kathy Kernell as Officer Manager and Bennie Lawson as Comptroller received monthly car allowances of \$50 and \$100 respectively.

(r) Mike Moseley was provided a vehicle by Defendant from April, 1981 through May, 1988 while he was Service Manager.

(s) As of June 1, 1985, Mike Moseley's salary as Service Manager was \$2,400 per month.

(t) As of June 1, 1985, Bennie Lawson's salary as Comptroller was \$2,470 per month.

(u) As of June 1, 1985, Kathy Kernell's salary as Office Manager was \$1,300 per month.

(v) David Matthew's salary as Parts Manager was \$2,000 per month as of August 18, 1986 and was increased to \$2,100 per month as of June 1, 1987.

(w) As of September 1, 1988, David Matthews' salary as Parts Manager was increased

\$200 per month if Parts Department sales increased 10% over the sales for the same month in the previous year.

(x) The parties will stipulate to a chart describing the salaries, bonuses, commission arrangements, and car allowances for all managers.

6. *Issues to be Determined by the Court:*

(a) Did the acts of Charles Hardy engender a sexually hostile work environment with respect to female managerial employees between April 22, 1985 and October 1, 1987?

(b) Did the Defendant constructively discharge the Plaintiff by condoning sexually hostile behavior by Charles Hardy?

(c) Did the Defendant discriminate against Plaintiff because of her sex by not treating her as other male managerial employees with regard to the terms and conditions of her employment?

7. all exhibits will be shown to opposing counsel five (5) days before trial.

8. Names of all witnesses will be exchanged in writing ten (10) days before trial.

/s/ Kent Sandidge, III
KENT SANDIDGE,
U.S. Magistrate

APPROVED FOR ENTRY:

WOODS & WOODS
A professional Law Association

By: /s/ Irwin Venick
Irwin Venick

Counsel for Plaintiff
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/s/ Lawrence Wilson
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DENNEY, LACKEY & CHERNAU

By: /s/ Stanley M. Chernau
Stanley M. Chernau

Counsel for Defendant
424 Church Street, 13th Floor
Nashville, Tennessee 37219
(615) 244-5480

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TERESA HARRIS,)	
Plaintiff,)	
vs.)	No. 3:89-0557
FORKLIFT SYSTEMS, INC.,)	
Defendant.)	

TRANSCRIPT
OF
PROCEEDINGS
July 23, 1990
Volume 1 of 2

APPEARANCES:

For the Plaintiff:	Mr. Irwin Venick Attorney at Law 121 17th Avenue S. Nashville, TN 37203
	Mr. Lawrence D. Wilson Attorney at Law Suite 220 One Burton Hills Blvd. Nashville, TN 37215
For the Defendant:	Mr. Stanley Chernau Attorney at Law 13th Floor Third Natl. Financial Ctr. Nashville, TN 37219

PREPARED BY:

BOONE COURT REPORTING
Cathy Boone Leigh
P. O. Box 571
Joelton, TN 37080
(615) 876-9334

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[p. 4] The above-styled cause came on to be heard on July 23, 1990, before the Honorable Kent Sandidge, Magistrate of the United States District Court for the Middle District of Tennessee, Nashville Division, when the following proceedings were had, to-wit:

THE COURT: Teresa Harris versus Forklift Systems, Inc., docket number 3-89-557.

Are the parties ready to proceed?

MR. VENICK: Ready for the Plaintiff, Your Honor.

THE COURT: Defendant ready?

MR. CHERNAU: Defendant is ready.

THE COURT: All right. First matter is the pre-trial order. Let's see where it was. Has there been a pre-trial order entered?

MR. VENICK: Yes, Your Honor. Filed last week.

THE COURT: Okay. Well, it was filed. It hasn't been signed by me, has it?

MR. VENICK: I haven't received a copy as of yesterday.

THE COURT: I have the order received July 19; right?

MR. VENICK: Correct, Your Honor.

THE COURT: Okay. Without objection that pre-trial order is now signed and is part of the record. [p. 5] We will try the case with respect to that pre-trial order. Any other pre-trial matters before we start taking the proof?

MR. VENICK: Yes, Your Honor. In that pretrial order we provided that there would be an additional stipulation as to the terms and conditions of employment of - most of the terms and conditions of the employment of the manager of the Forklift Systems. I have that stipulation here. I can submit that to the Court.

THE COURT: All right. Any objection?

MR. CHERNAU: No objection.

THE COURT: All right. Part of the record. Okay.

MR. VENICK: Does the Court desire proposed Findings of Fact and Conclusions of Law at this time?

THE COURT: Yes. Do the parties have theirs?

MR. CHERNAU: Mine has been filed with the Clerk's Office this morning and said they will be delivered up to you. I have a copy.

THE COURT: Let me have a copy.

MR. CHERNAU: It is marked "received" so it is the same.

THE COURT: Okay. All right. Now then, does either party want the rule?

MR. CHERNAU: Yes, I'd like the rule.

[p. 6] MR. VENICK: Yes, Your Honor.

THE COURT: Each party shall get themselves in compliance with the rule. I do not know who the witnesses are.

Mr. Venick, are your witnesses out of the courtroom?

MR. VENICK: Yes, Your Honor.

THE COURT: Okay. Mr. Chernau, are your witnesses out of the courtroom?

MR. CHERNAU: Yes, sir.

THE COURT: All right. You may proceed.

PLAINTIFF'S PROOF

MR. VENICK: Your Honor, I'd like to call Teresa Harris.

TERESA GAIL HARRIS was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VENICK:

THE COURT: Have a seat and then state your full name.

THE WITNESS: My name is Teresa Gail Harris

THE COURT: All right, Mr. Venick.

Q. Mrs. Harris, you reside here in Nashville Tennessee; is that right?

A. Yes, sir, I do.

[p. 7] Q. And you are a high school graduate?

A. Yes, sir, I am.

Q. And currently employed by your husband's company; is that correct?

A. Yes, sir. I am.

Q. And that company is in the business of providing industrial batteries to heavy equipment operators; is that correct?

A. That's part of it, yes, sir. In addition to that we sell overhead cranes.

Q. You are not in the forklift business, are you?

A. No, sir, we are not.

Q. You were employed by Forklift Systems from April 22, 1985, to October first, '87, as rental manager; is that correct?

A. That's correct.

Q. With respect to your duties as rental manager, you had a written position description, did you not?

A. Yes, sir, I did.

THE COURT: You have already exchanged exhibits, haven't you?

MR. VENICK: Yes, sir.

THE COURT: Don't need to hand him another one. Let's get on with it. That adds another day to the trial if you start handing those things. Use them and let me [p. 8] know you have given them to him previously.

MR. VENICK: Yes, Your Honor.

Q. Mrs. Harris, I provided you a copy of your written position description taken from your personnel file. Is that in fact a position description you had while you were at Forklift Systems?

A. Yes.

Q. Did you perform all those duties?

A. Yes.

Q. Did you perform any other duties other than those written on that document?

A. I did whatever I was asked to do.

Q. Now, with respect to leases that you were responsible for, can you describe what kind of leases you negotiated on behalf of your employer?

A. Well, we - I get in short-term as well as long-term leases.

Q. What was a short-term lease?

A. A short-term lease could be anything from a daily rental to a monthly rental. We had rentals that went three to six months, a year or so. It varied.

Q. What would a long-term lease be?

A. Anything over six months.

Q. Now, your job required that you travel outside the office?

[p. 9] A. Yes, it did.

Q. For what purposes?

A. To call on rental customers or leasing customers as well as new equipment sale customers. I had specific accounts that I was responsible for.

[Q. sic] Now, the other managers, did you travel out of the office more than Mr. Lawson who is the controller?

A. Definitely.

Q. How about as Mr. Moseley who was the service manager?

A. Yes, sir.

Q. How about for the parts managers?

A. Yes, sir.

Q. You travelled out of the office more than all those individuals?

A. Yes, sir, I did.

MR. VENICK: I'd like to enter the job description as Exhibit Number 1, Your Honor.

THE COURT: All right. Any objection?

MR. CHERNAU: No objection.

THE COURT: They have not been pre-marked?

MR. VENICK: I'm sorry, it was pre-marked the lower left-hand corner.

THE COURT: Doesn't have a number on it.

MR. VENICK: I did not know what number it [p. 10] would be.

THE COURT: Let me take a recess. How many exhibits -

MR. VENICK: I will mark them as I hand them in, Your Honor.

THE COURT: How many exhibits you got?

MR. VENICK: Approximately ten.

THE COURT: Number them 1 through 10. If one doesn't come in, just skip a number. Doesn't have to be consecutive. Have them numbered so that they are different numbers from the other exhibits. Saves time that way. I will put 1 on it here.

(Rental Manager job description was marked Exhibit 1.)

BY MR. VENICK:

Q. Mrs. Harris, we have stipulated to your compensation arrangement as rental manager. Can you describe that arrangement?

A. I was paid a base salary, commissions onto rental trucks. There were two or three specific accounts that I handled that I was paid sales commissions on, and I was paid 18 cents a mile.

Q. Now, was that commission basis part of your compensation arrangement when you began employment?

A. Yes.

[p. 11] Q. And the commissions that you got, they were based on rentals that were owned by both Forklift Systems and Forklift Leasing Corporation; is that correct?

A. That's correct, yes, sir.

Q. Let me hand you a document and ask you if you can identify this, please.

A. This is a list of the rental units for Leasing and Systems.

Q. Is that taken out of your personnel file?

A. I don't really know.

Q. Have you seen it before?

A. Oh, yes, sir. I would do update this on a regular basis so this would be something that I gave to the receptionist to type.

Q. Handwriting that's on there is your handwriting; is that right?

A. Doesn't - no, sir, this looks like Charles Hardy's handwriting to me.

Q. This does include all the rental units you are responsible for?

A. As far as I know, yes, sir.

MR. VENICK: Like to move that into evidence as Exhibit 2.

THE COURT: Any objection?

MR. CHERNAU: No, sir.

[p. 12] THE COURT: Part of the record.

(List of rental units was marked Exhibit 2.)

Q. Now, with respect to the salary and compensation arrangement you had previously described, were there any changes in that arrangement while you were employed at Forklift Systems?

A. Yes, sir. Originally I was paid commission on any sales that I assisted in. In February of '86 Charles called me into his office.

Q. That's Mr. Hardy?

A. Yes. Mr. Hardy called me into his office and told me that I would be receiving a 200 dollars a month base salary increase because I was doing a good job and he was happy with my work.

When it came time for commissions on new trucks or new sales in March and I had figured the commission statements, Mr. Hardy told me that I wasn't going to be getting commission on all the sales that I had, just certain accounts and he couldn't afford to pay me on every lift truck that I sold, just certain accounts. So in essence, it really wasn't an increase but rather a decrease.

Q. Was there any other change in your commission basis or employment compensation while you were employed at Forklift Systems?

[p. 13] A. Not that I am aware of, no, sir.

Q. Let me hand you this document, Mrs. Harris, which are your W-2 forms for the years 1985, 1986 and '87.

A. Uh-huh.

Q. Will you please state to the court your total salary or income was in 1985. It is listed number 10.

A. \$13,796.74.

Q. And for 1986?

A. \$30,024.41.

Q. And for 1987?

A. \$26,050.93.

Q. 1987 figure was the salary commission bonuses you received from January 1, '87, through September 30, '87; is that correct?

A. Well, it would cover that period of time. I did receive a check on October 15, but that was for my commissions for the month of September.

MR. VENICK: Like to move that into evidence as Exhibit Number 3.

THE COURT: Any objection?

MR. CHERNAU: None.

THE COURT: All right, then.

(W-2's were marked Exhibit 3.)

Q. When was your salary or job performance subject to review?

[p. 14] A. In May or June.

Q. Was that during an annual review of some sort?

A. Yes, sir.

Q. Did you have such a review in 1986?

A. Yes, sir, I did.

Q. Who did you have that review with?

A. Mr. Hardy.

Q. What did you discuss at that time?

A. He told me that I was doing a good job. He was happy with my work.

THE COURT: When was this?

THE WITNESS: In 1986.

THE COURT: Can you be more specific?

THE WITNESS: May or June. I don't know exactly what day, no, sir.

THE COURT: Okay, go ahead. He told you what?

THE WITNESS: He told me that he was really happy with my work. He told me what my bonus was going to be. He told me that my bonus was going to be less than the tenured managers because I had only been there for a year but when I would get my bonus in 1987 that would be the same as everybody else's, and that made sense to me.

Q. Now, what did he tell you at that time that consideration of salary increase would be on? What basis would that be?

[p. 15] A. My salary increase was based on when I would get a salary increase would be based on how my department did, how well my department did.

Bonuses were based on how the overall company did as well as our profit sharing. That was overall companies, Leasing and Systems.

Q. At any time prior to and including the date you had your review with Mr. Hardy in May or June of '86, had he expressed to you any complaints about your job performance?

A. Oh, no, sir. As a matter of fact, he told me one day that I was his hero. That I was doing a really good job

in that department and he was real excited about me being in employ for Forklift Systems.

Q. Now, did you have a review, similar review with Mr. Hardy in 1987?

A. I didn't receive a review in 1987.

Q. Did you have a meeting with Mr. Hardy in 1987?

A. The only meeting that I had with Mr. Hardy in 1987 as far as the money was concerned was in May or June, and again I don't remember which month. He called me in and said that my bonus was 3,000 dollars and my bonus was going to be less than the other tenured managers because I was on commissions and it was going to be less.

Q. Did you discuss a raise with him?

[p. 16] A. No, we did not discuss a raise. We did not discuss my job performance. We didn't discuss my job, period. He just told me that, and that was it.

Q. So what did Mr. Hardy tell you, if anything, about your job performance at that time?

A. He didn't it wasn't mentioned.

Q. What complaints, if any, did Mr. Hardy bring to your attention at that time and since your last meeting in May or June of '86?

A. I don't recall any. He never complained to me about my job performance. There was one incident I remember about a pair of forks that we needed to put a pair of polished and tapered forks on a new lift truck for it to be delivered, and I had sent them out to a fabricator

to polish and taper them and Mr. Hardy had sent me a memo in reference to that. I don't remember exactly when it was.

He said I should have waited and ordered them from the factory, and I in my opinion the best thing to do would be to go ahead and get that truck delivered because that truck was on our floor plan. It might have cost us a little bit more money, but the return on our money would be better if I got them quicker.

Q. When did that occur?

A. I don't remember exactly. Some time in '86 I think or '85. I am not sure. But that was the only [p. 17] complaint.

Q. At the time you and Mr. Hardy had this meeting sometime in May or June of '86, had you started having any concerns about the way Mr. Hardy was treating you as a rental manager?

A. In '86?

Q. Sorry, in '87. When you had your meeting with Mr. Hardy in May or June of '87 where he mentioned a bonus to you.

A. Oh, yeah. I was not very happy, no, sir.

Q. Why weren't you happy? How had he been treating you with respect to being a rental manager?

A. As far as a rental manager, he had made the statement several times, "We need a man as a rental manager." He said it in the middle of the lobby.

One day he punched Dick Reed on the arm and said, "Hey, Dick, don't you think we need a man as a rental

manager?" And Dick just stood is there. Didn't say anything. He got red in the face.

I said, "Hey, Dick, I really appreciate you taking up for me on that one."

He had said that more than one occasion. He would tell me he called me a dumbass woman. Told me that I was a woman; said, "You are a woman. What do you know?"

[p. 18] One day in the lobby there was the guy I don't know the man's name, but he was the man that did our specialty things. He had made our Forklift Systems caps. And he had come in with the cap, and Charles - I was at the receptionist area and Charles said, "Hey! Teresa, don't you like these caps? Don't they look fantastic?", blah, blah, blah.

And I said, "No, Charles, actually I think the beige on them is a little too pink, and I don't think it looks too good." He said, "What in the hell do you know? I am going to talk to somebody that knows what they are talking about", and he walked back to the back to the service department.

In managers meetings if I voiced my opinion, I was told, "What do you know? You are a woman."

THE COURT: By whom?

THE WITNESS: By Mr. Hardy. But it became a joke. Other managers would say the same thing to me. Mike Moseley said it to me several times.

Q. Became a joke to whom?

A. To everybody at Forklift Systems.

Q. Was it a joke to you?

A. It wasn't funny to me. It embarrassed me.

Q. Please tell Your Honor the other things Mr. Hardy would do.

[p. 19] A. He called me - I was called into his office in reference to a salesman's commission.

THE COURT: When?

THE WITNESS [sic]: In the summer of 1987.

THE COURT: Is this the May-June affair that you have already talked about, May-June meeting?

THE WITNESS: Oh, no, sir. This was in reference to a salesman's commission. Not when he called me in about my bonus.

THE COURT: All right.

A. And I had been doing sales commissions from the day I walked in the door since 1985. And I had done them the same way. They went to Charles Hardy every month for approval, and I went over them with Bennie Lawson, the comptroller, and he wanted to know why I had changed it. I said, "I haven't changed it. You know, this is the way they have been all the time. You get them every month."

And he said, "Ah, you are a dumbass woman. You have cost me all this money."

Q. What else did Mr. Hardy do? What did he have you do as far as bringing coffee to him?

A. He would buzz me in my office and ask me to come over and get coffee for himself and other guests that he had. One day - my office was all the way across from his the far corner, the far wall, and the lobby was in [p. 20] between. One day he had Keith Welham in his office.

Q. Who is Mr. Welham?

A. Charles Hardy was involved in a limited partnership of some sort, and I don't really know all the details, but he worked with Keith Welham on it. Called me and told me to come in, and I went over and he told me he wanted to get some - he wanted coffee and he said, "Oh, by the way, Teresa, don't you think it is about time we started screwing around? You and Larry have been married over a year now." And I just looked at him.

Q. How often did Mr. Hardy make a comment "how about screwing around?"

A. Said that to me on more than one occasion. He also told me one time that we were going to go to the Holiday Inn and negotiate my raise.

Q. When he made the comment about screwing around a number of occasions, was that between you two or in front of somebody else?

A. He wouldn't say these things just when it was the two of us. He always said it when there were other people around.

Q. The other comments that you testified about Mr. Hardy making: "What do you know? You are a dumbass woman", "we need a man as a rental manager", you ever hear him make any similar comments about that to men?

[p. 21] A. He never called any of them dumbass men or told David Matthews, "We need a female for a parts manager" or Mike Moseley, "We need a female for a service manager." He never said that.

Q. With respect to bringing coffee into Mr. Hardy's office when there were customers, did you ever see him or see male managers bring coffee into customer meetings?

A. No, sir.

Q. With respect to the comment that Mr. Hardy made about negotiating your raise at the Holiday Inn, who was present when that comment was made?

A. One that stands out in my mind the most was in front of David Thompson, who was a sales representative, and Gordon Cofflin, who was our Nissan factory rep.

Q. What was Nissan with respect to Forklift Systems?

A. It was our major supplier. We were the distributor for Nissan forklift trucks.

Q. What things did Mr. Hardy do with respect to coins directed towards female employees?

A. He would ask us to get quarters. He always used the word quarter out of his pocket. He would say, "Teresa, I have a quarter way down here. Would you get that out of my pocket?"

[p. 22] Q. Front pocket or back pocket?

A. It was in his front pocket.

Q. How often did he do that?

A. It was frequently. Once a week, once every two weeks. It was pretty frequent.

Q. Did you ever see him direct that language to any male employees?

THE COURT: During what period of time that you were there?

THE WITNESS: Oh, that was -

THE COURT: Did it start right away?

THE WITNESS: He had always made remarks like that, yes, sir.

THE COURT: No, about the quarters.

THE WITNESS: Yes, sir.

THE COURT: Started right away?

THE WITNESS: He'd always - yes, sir. Yes, sir.

THE COURT: For the two and a half or three-year period?

THE WITNESS: Yes, sir.

BY MR. VENICK:

Q. Did you ever see him make similar comments to males?

A. No, sir.

[p. 23] Q. What about anything that Mr. Hardy would do objects on the floor?

THE COURT: What did you tell him when he asked you to get the quarter out?

THE WITNESS: I just would look at him. I wouldn't say anything.

THE COURT: Would you comply?

THE WITNESS: Not hardly. No, sir.

THE COURT: Okay.

BY MR. VENICK:

Q. Did any of the females comply?

A. No, sir. Never.

Q. And was that comment directed to other females as well as yourself?

A. Yes, sir.

Q. What about Mr. Hardy throwing objects on the floor near female employees?

A. Yes, sir, he did that. One day in his office Stephanie Vanns and myself were in his office, and his desk is like this and he is this way and I am here and Stephanie is here. And his trash can is like to the left, and he threw something. Stephanie was standing there. Threw it over. Stephanie had on this sleeveless top, and he threw it down and said, "Stephanie, pick that up for me." And she picked it up, and when she did you could see down her [p. 24] top. And he told her he wanted her to wear that kind of top more often.

Q. Was that the only occasion where that happened?

A. I had seen him do that before.

Q. With Ms. Vanns?

A. With Ms. Vanns, yes. He would tell the girls that he had heard that eating corn would make your breasts grow, and the girls who had the large breasts that worked in our office, he would ask them if they ate a lot of corn. Dixie Shadrake, he would say - he would change it around a little bit for her benefit. Dixie is an American Indian so when he would ask Dixie he would say, "I bet you are eating a lot of maize."

Q. Did he ever do that to you?

A. No, he never said anything about my breasts, no, sir.

Q. Did Mr. Hardy ever make any comments to you about any other of your body parts?

A. His big thing with me was my bottom. He would refer to it as a racehorse ass. And one -

THE COURT: When did that happen? On more than one occasion?

THE WITNESS: A number of times, yes, sir, in 1987. In June I remember specific June or July -

THE COURT: Eighty-seven?

[p. 25] THE WITNESS: Yes, sir. He had been to Florida. He and Sandra had been to Florida

THE COURT: Sandra is his wife?

THE WITNESS: Yes, sir.

A. And he said, "Hey, Teresa, you wouldn't believe these bikinis these girls are wearing now." He said, "They wear there is nothing but strings on the bottom." He said, "Of course you couldn't wear one like that because your ass is so big, if you did there would be an eclipse and nobody could get any sun."

Q. Did he make other comments to you about your body parts besides that one? Any comments about your jeans?

A. He told - well, if I wore tight jeans he would make a comment about my butt or if I, you know, yeah. He - yeah, he did. But that was primarily the part of my body that he talked about.

Q. Now, how did all these comments and behaviors of Mr. Hardy affect you?

A. It embarrassed me. It embarrassed me. The comments about my how I looked embarrassed me, but the comments about my ability to do my job and that I was stupid and I was dumb devastated me. I hated walking in there. He embarrassed me. Everybody made fun of me because Charles Hardy did that. And I was supposed to [p. 26] laugh about it, and it wasn't funny.

Q. He was leading the pack, huh?

A. He was leading the pack.

Q. How were you feeling? What kind of symptoms were you having by July or August of 1987?

A. I cried all the time. I was having shortness of breath. I wasn't sleeping at all. I was drinking heavily. I drank a lot. I would get drunk every night so I would go

to sleep so I could get up and go to work the next day, and I hated it. I shook. I would sit in my office and I would shake. I hated it. I just hated it.

Q. Did you have occasion to see a physician?

A. I went to see my doctor. He ran tests on me. He did an EKG and he did chest x-rays because of the breathing problem, and there was nothing physically wrong with me. He attributed it all to anxiety and gave me tranquilizers and sleeping pills.

Q. Outside of your job, was there anything else happening in your life that would cause any kind of anxiety on your part?

A. No.

Q. We were talking August of 19--

- A. 1987, yes, sir.

Q. When did you see your doctor? Do you recall?

A. On August 17, 1987, on a Monday.

[p. 27] Q. Now, prior to August 17, 1987, had you tried to speak to Mr. Hardy about how he was treating you?

A. Oh, def - yes, sir. I went to talk to Charles. We were - my grandmother - I went in to see Mr. Hardy in I talked to him in 1986. My grandmother had passed away in August of 1986, and Mr. Hardy came to the funeral home and extended his condolences and told me to take as much time as I needed, and the company sent flowers.

And I went back to work on Friday, and that was our pay day on Friday. And when I got my check, it wasn't

correct. And Mr. Hardy had deducted two days' pay from my check for being off when my grandmother died. And I talked to Mr. Hardy about that, and he told me that he didn't know anything about it. That he didn't do it. That Bennie Lawson had done it.

And I said, "How could Bennie Lawson have the authority to dock my check?" And he said, "Well, I just don't know."

And I said, "Well, that don't make sense to me that Bennie Lawson could do that. You are my immediate supervisor. You sign my check, and you should know how much money I make. I mean, there could be a computer error and I might be being paid too much, you know. It is your job to know how much I make and to watch that."

Well, after I had said - he told me that he [p. 28] would make it up to me. He said, "I am real sorry; I will make it up to you at bonus time."

When bonus time came around, I got less. But after that because I had said, you know, "It is your job to know", he would say, "Ah, hell, Teresa, you don't think I am a very good manager anyway. You have told me I am a piss poor manager" so he would rub it in to me.

When we were moving into the new building - we were on Fader Court when I first went to work there, and I had an office originally my office was next to Charles' and then we converted that to a conference room and my office was - I was put in another office.

But when we were moving over to Elm Hill Pike, I wasn't getting an office. I was going to be put in a cubicle out in the middle of the lobby.

And I asked Charles why, and he didn't really give me an answer why. But at any rate, I ended up with an office, but my office was the same size as David Matthews, and they were smaller. But because I had brought to his attention that I wasn't getting an office and because my office was small then that became another big joke with the company, the other big employees there. "Oh, yeah, Teresa, where are we going to put your couch and your table?" And it was supposed to be real funny. That wasn't funny either.

[p. 29] Q. All the other managers got offices?

A. Yes, sir.

Q. Without -

A. Without - well, I don't know if they had to ask him, but the plans were that everybody was getting offices except for me.

Q. So what had you learned during this period of time as far as going to Mr. Hardy with complaints?

A. Any time I ever complained to Charles, I lived to regret it because it was thrown up to me. I was embarrassed or ridiculed about it. It was never any - if you said anything to him in confidence like those things then, hey, you heard about it later.

Q. Now, you had previously testified that by August of 1987 you were in an extreme state of anxiety?

A. Yeah. Yes, sir.

Q. You were crying, having trouble with your family?

A. Pardon?

Q. You were having trouble getting along with your kids, I think?

A. I was ugly to my children. My children would call me and I would be really ugly to them and I would say terrible things to them and hang up on them. I always did that for Mr. Hardy's benefit because he had made remarks to [p. 30] me about that too: "Your kids call all the damn time." So when my kids would call, I would nearly have a heart attack if Charles Hardy was anywhere within ear shot.

Q. With respect to how you were feeling by August of '87, what did you finally decide you had to do?

A. I went in and talked to Mr. Hardy. I decided that I couldn't work there any more. I was - I couldn't work for him. I went in and talked to him about it and turned in my resignation on August 18, 1987.

Q. Who else had you spoken to about doing that before you spoke to Mr. Hardy?

A. Spoke with Dick Reed and David Matthews.

Q. Mr. Reed had what position at that time?

A. He was the sales manager. And David Matthews was the parts manager.

I went so far because my intention was to never darken that door again as to get out rental agreements

and give Mr. Reed a list of all the commitments I had made as far as rental units were, and he was well aware of my intention not to come back there ever again.

Q. Why were you going to see Mr. Hardy at this time in August of '87?

A. To tell him I had had it. I wasn't going to work there any more. I couldn't work there any more.

Q. And when did you meet with Mr. Hardy?

[p. 31] A. It was late in the afternoon. It was after 5:00 o'clock.

Q. Who was present?

A. Mr. Hardy and myself.

Q. And what happened during that discussion?

A. I told him how I felt. That he embarrassed me. I told him that it had hurt my feelings. He had insulted me. That I didn't get a review. That he had called me a dumbass woman. That he made me feel stupid and useless and that I couldn't work there any more. That I had had it. That it was demeaning to me personally. It was demeaning to me as a female and it made me - it embarrassed me to me. It made me feel spineless that I let this man talk to me that way.

Q. What did Mr. Hardy tell you during that meeting?

A. He told me he was sorry. He asked me to reconsider and that he was sorry. And I told him at first I told him that I kind of had a problem with reconsidering, but then I told him - he said, "Will you sleep on it and you

come back in the morning and give me your decision?", and I told him that I would.

Q. What did he promise to do?

A. He told me that he would stop. That he would work - that he would stop.

[p. 32] Q. And what did you decide to do?

A. I decided that I would come back. And the next morning I got to work before Charles Hardy did, and when Mr. Hardy came in I immediately went to his office and I closed the door and I told him that I had reconsidered and that I was going to stay. And he patted me on the back and he hugged me and he said, "Hey, let's get to work and forget all of this", and I said, "That's fine."

Q. And how would you describe Mr. Hardy's behavior for the few weeks after your meeting with him on August 18?

A. Oh, at first he really tried. He really did. He would catch himself. I don't know exactly what he was going to say because he would stop before he said it. He would say, "Oh, I forgot, Teresa, I am not supposed to talk to you like that any more." I don't know what, you know. He would stop.

But then in September of 1987 I told him that I was working on a multiple lease deal at ASI, which is Aladdin Synergetics, and that I really felt like we were going to get that order. He said, "What did you do, Teresa, promise the guy at ASI bugger Saturday night?"

Q. What was the implication of that statement? What does that mean?

A. That I had sex with customers.

Q. What did you decide after Mr. Hardy made that [p. 33] statement?

A. I wasn't going to work there any more.

Q. So what did you do to effect that decision? What did you do to follow through with that?

A. I talked to Dick about it. And I wrote Charles Hardy a letter. And I - to tell him that I wasn't coming back and why.

I gave it to Dick and I left that day, and that night I decided that that wasn't a real smart move on my part. If I walked out that day, I had worked half the month of September and I had a lot of long - I had rentals that were going to, you know, be there for the month and that if I didn't stay then I wouldn't receive my commission check for September. And that was over a thousand dollars, and I needed the money so I decided to stay until October first.

Q. Let me hand you this document, Mrs. Harris. Can you identify that?

A. This is the letter that I wrote to Mr. Hardy.

Q. And what's the date on the letter?

A. September 16, 1987.

Q. There is an envelope attached to that letter; is that right?

A. Yes, sir.

Q. And did you write something on the envelope?

[p. 34] A. I wrote "to Charles Hardy".

Q. And that's what you gave to Mr. Reed?

A. Yes, sir.

Q. It was unopened at that time; is that right?

A. It was unopened.

Q. And when he gave it back to you, was it opened?

A. No, sir, it wasn't opened. I made a notation on the back of it the day that I opened it.

Q. And when was that?

A. I opened it on April 3, 1988, to send to Mr. Lorenzo Benson who was the investigator for my complaint with the EEOC.

MR. VENICK: I'd like to move that into evidence as Exhibit Number 4, Your Honor.

MR. CHERNAU: No objection.

THE COURT: Part of the record.

(9/16/87 letter was marked Exhibit 4.)

Q. So your last day at Forklift Systems was October first, 1987?

A. Yes, sir.

Q. Now, between the time that you decided in September '87 to leave Forklift in October first of 1987, did anything else happen to affect your decision in any way?

A. No, sir.

[p. 35] Q. Nothing happened that would make it more likely for you to leave or less likely for you to leave?

A. No, sir, I loved my job. I made good money. I liked what I was doing. I liked my customers. I loved my job. I wanted to work there. I didn't want to leave. I wanted to stay. We had good - we had a retirement plan, we had disability, and I loved it. So . . .

Q. So what happened on October first?

A. I left. I waited until we received our checks and I left.

Q. What time did you get your check?

A. It was late in the afternoon after 4:00 o'clock.

Q. Was that unusual?

A. That was very unusual. We usually received our checks before noon.

Q. But for some reason that day it was late?

A. For some reason, yes, sir. I don't know why.

Q. Did you tell anyone else you were leaving that day?

A. I had spoken with Dick Reed earlier. I didn't talk to Dick that day, but I had spoken with Dick Reed earlier and told him that after the September incident that I was going to leave on October first and why I was leaving. I had told David Matthews that I was leaving that [p. 36] day, yes, before I got ready to leave. I had already put my things in my briefcase, and I walked to the back to find

David and I told David that I was leaving. That this was it, you know; "I am out of here." That I didn't have to take this any more and that I had in fact talked with the TCM factory rep.

TCM is a competitor of Nissan's. They also handle lift trucks. And that I would like to go into the lift truck business because I did like that business and that I had talked to them.

Q. Had it not been for the behavior of Charles Hardy, what action would you have taken with regard to your continued employment with Forklift Systems on October first, 1987?

A. I'm sorry?

Q. Had it not been for the behavior and actions with Charles Hardy, what actions would you have taken with your continued employment with Forklift Systems on October first, 1987?

A. I would have retired there. I loved it.

MR. VENICK: No further questions, Your Honor.

THE COURT: All right. You may cross examine.

I tell you what, let's take about a ten-minute recess.

(A short recess was taken.)

[p. 37] THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. CHERNAU:

Q. On October first, 1987, you collected your paycheck and left your place of employment; is that correct?

A. Yes, sir, it is.

Q. Without notice to anyone?

A. Pardon?

Q. Without notice to anyone?

A. I spoke with David Matthews.

Q. At the time that you spoke with David Matthews, I believe you told him you could not take it any more?

A. Yes, sir, that's correct.

Q. Do you know who was in Mr. Hardy's office at the time you said you couldn't take it any more?

A. No, sir, I don't.

Q. Do you know whether or not it was a man who was going to do business with Forklift Systems that your husband had previously been doing business with, taking the place of your husband's business with Forklift Systems? You know what I am talking about, don't you?

A. No, sir, I - would you ask the question, please.

Q. Wasn't there a man in Mr. Hardy's office at the [p. 38] time you said to David Matthews "I can't take this any more", wasn't there a man sitting in Mr. Hardy's office with his truck parked right in the front of the

building that was going to do business with Forklift Systems taking the place of the business that your husband's company had been doing with Forklift Systems?

A. I don't remember seeing anyone there that day, but it was not unusual for my husband's competitors to be at Forklift Systems. I had in fact written purchase orders to my husband's competitors. I had been to lunch with my husband's competitors.

MR. CHERNAU: How am I go to control this, Your Honor? I need her to be responsive to the questions.

MR. VENICK: Your Honor, she is answering.

MR. CHERNAU: If her answer is nobody was in there, I accept it.

THE COURT: Your testimony is there was nobody in the office at the time he is referring to with Mr. Hardy?

THE WITNESS: I don't know. But it was not unusual for my husband's competitors to be at Forklift Systems. They had been in the past. And that made no difference to me if they were.

Q. Is it a fact then on Friday, October 2, 1987, you met with your attorney, Larry Wilson?

[p. 39] A. Yes, sir, that is correct.

Q. Is it a fact that on Monday, October 5, 1987, you filed your EEOC complaint?

A. Yes, sir, that's correct also.

Q. Is it also a fact and correct that not until August of 1987 did you ever complain to Mr. Hardy about the things you now complain of?

A. No, sir, that's not correct. I testified that I had spoken with Mr. Hardy about my office and I had spoken with Mr. Hardy about the docking my pay with my grandmother, and there was no reason for me to talk to Mr. Hardy about not getting a review because I had received one the previous year.

Q. On December 7, 1989, I took your deposition at Mr. Venick's office. Do you recall that?

A. Yes, sir, I do.

Q. Do you recall me saying to you I am now at line 14, page 12:

"Q. Okay, up until August of '87 you had not complained?

"A. The things that Charles said became more personal in '87.

"Q. But my question is did you prior to August of '87 - I am going to let you explain anything you want. I am not trying to cut you off, but I need to get my answers. Prior to August of '87 you had not complained; is that correct?

"A. I went into his office to complain before then."

"Q. When was that?"

[p. 40] "A. Probably June or July. I don't recall exactly.

"Q. Of what year?

"A. Of that same year, 1987."

So if we take your testimony here -

A. Uh-huh.

Q. - does that mean that during the time of your employment from April '85 until the late summer of '87, probably June or July when you tried to go in you say, you did not complain until those months of 1987. Isn't that an accurate statement?

A. No, sir.

Q. Well, that's what you said in your deposition, and I just asked you the question; you gave a different answer. What's your answer to the question?

A. Also in my deposition, Mr. Chernau, I talk about the office and I talk about my grandmother. I also -

Q. Okay, other than the office that you mentioned to him and that you got and other than your grandmother that died, were there any other things that are really the base of this lawsuit: the sexual harassment, the hostile environment, anything else you ever complained about to him?

A. I did not complain to Mr. Hardy about the quarter in the pocket or any of those type things.

[p. 41] Q. All right.

A. But I did complain to Mr. Hardy in August because I did not receive a raise. I was not called the dumbass woman until 1987. I was not denied reviews

until 1987, and there was no reason for me to complain to Mr. Hardy up until that time.

Q. So up until that time, all of these things that you said were continuing were all right up until then?

A. No, sir.

Q. Well, I thought that's what you just said?

A. I said I complained about my review in 1987.

Q. Well, we are going to get to that. That's when you taped that conversation, wasn't it?

A. Yes, sir, it mosy [sic] certainly is.

Q. Okay, we're going to talk about that in a moment.

A. Okay.

Q. Let me ask you this. Is it a fact and is it correct that in August of '87, if that's the month you say that you complained, that a business relationship between your husband and Mr. Hardy began to deteriorate?

A. No, sir.

Q. That's not accurate either. Okay.

A. No, sir, it is not.

Q. Tell me what's accurate. When did it start to [p. 42] deteriorate?

A. Mr. Hardy had Stephanie Vanns cancel all orders with my husband on October 7, 1987. Up until that point, he received the bulk of the business.

Q. During that period of time – we have already gone over this now. You remember the trial in Chancery Court. Remember the trial in Chancery Court?

A. Yes, sir, I do.

Q. Remember the trial in Circuit Court?

MR. VENICK: Your Honor, object to this as irrelevant.

MR. CHERNAU: Certainly not irrelevant. I am cross examining.

THE COURT: I don't know whether it is relevant or not. Go ahead.

A. Yes, sir. There have been several courts, yes, sir. I remember them.

Q. And do you remember the testimony that for a period of time Mr. Hardy had voiced a lot of complaints about the way your husband was running the business that he had invested in. Isn't that correct?

A. He [sic] that happened in 1986, yes, sir.

Q. And didn't you and didn't it heat up where Mr. Hardy finally said around this time, "Look, either we've got to replace you or you buy it, whatever you want to do, [p. 43] but I don't want you running it any more." Isn't that accurate?

A. I don't understand what you are asking me didn't it heat up. You are going from '86 to '87. My husband was forced to buy the business in 1986, yes, sir. I was employed there until October of 1987. Orders were cancelled in '87. I don't –

Q. The orders being cancelled were in conjunction with terminating your husband's business with Forklift, were they not? Wasn't that the termination of the relationship of doing business?

A. They were terminated October 7 the orders were cancelled. I left on October first.

Q. And let let [sic] me ask you this. Isn't it a fact that during the time of your employment, your compensation increased during each period of your employment? Isn't that accurate?

A. I did a good job, yes, sir. I was paid on the sales of my department, and it is obvious by my tax returns that I did better every year. Yes, sir, it did increase. I worked hard.

Q. And increased dramatically, didn't it? In 1985 I think you said you made approximately \$13,000?

A. That was just from April until December. That wasn't a full year.

[p. 44] Q. Right, that's right. Because in '86 you had a full year and and [sic] you made 30,000 dollars?

A. That's correct.

Q. And in ten months, in just ten months in '87 you had made 30,000 dollars. Isn't that accurate?

A. I don't think so, Mr. Chernau. I think it said \$26,000.

Q. I will give it to you exactly. In ten months in 1987 you made 26,050 dollars and 93 cents?

A. Ten months in when, sir?

Q. 1987.

A. I made how much?

Q. \$26,050?

A. Right, that's what I said. In '87.

Q. That's for ten months?

A. Yes, sir. I thought you said I made 30,000 dollars in ten months.

Q. Prior to your departure from your employment at Forklift, -

A. Uh-huh.

Q. - you had planned to open a business in competition with Forklift. Is that an accurate statement?

A. Yes, sir, I had.

Q. Is this an accurate statement that at that meeting with Mr. Hardy you secretly taped the conversation?

[p. 45] A. Yes, sir, I did.

MR. VENICK: Objection. What relevance is whether it was taped?

MR. CHERNAU: Because I am going to ask her about that, and I am laying the basis for it.

THE COURT: Okay.

BY MR. CHERNAU:

Q. Is that an accurate statement?

A. Yes, sir, I did do that.

Q. And did you subsequently transcribe the tape yourself?

A. Yes, sir, I did.

Q. And did that tape - now, Mr. Hardy didn't know he was being taped?

A. No, sir, he did not.

Q. As a matter of fact, you stayed in there so long that the tape ran out?

A. Yes, sir, that's true.

Q. So when you transcribed the tape, a large portion that happened at the end of the meeting was not on the tape?

A. There was some. I don't know if it was a large portion, but there is some that's not, no, sir.

Q. And did Mr. Hardy on the tape say to you - now, he doesn't know he is being taped. Did he say to you [p. 46] that he did not know that you were offended by any of his conduct?

A. Yes, he did say that.

Q. He didn't know he was being taped?

A. No, sir, he didn't.

Q. And did he say to you, "You know, Teresa, I am really surprised because you have all been treated as one of the boys. We always thought of you as one of the boys." Is that an accurate statement?

A. Yes, sir, he did.

Q. Let's stop one moment. Is the reason he said you were treated as one of the boys and didn't know what he had done was offensive to you is because two or three times a week you would stay after work with the men as the only female and drink beer and talk? Is that an accurate statement?

A. I did stay two or three times a week and drink beer, yes, sir. And 95 percent of that time my husband was also there.

Q. Which husband is that? Which husband are you talking about?

A. Larry Harris.

Q. Is it accurate that Mr. Hardy during the transcription of this tape - let me ask you something before I ask you that. Your husband Larry and Charles [p. 47] Hardy and his wife Sandra were social friends, were you not?

A. We went out a couple of times together. We weren't palsy-walsies where we were out every weekend or anything like that. Probably over the course of two and a half years outside something that involved work I can only recall one time that we went out. We went to see Lewis Grizzard. The other times they were pretty much business related.

Q. Well, is it accurate or inaccurate to say that you had a social relationship with Mr. and Mrs. Hardy?

A. I would say that we did, yes, sir.

Q. Now, on the tape did Mr. Hardy say to you:

"Well, you have avoided talking to me unless you had to. I think that the mistake you made is that you should have come in here and said, 'Look, we've got to get something straight and if we can't get it straightened out, I think maybe it would be better if I went elsewhere.' You don't come in and say, 'I am turning in my resignation.' I could have said okay and then you'd be gone. First of all, if you decide in the morning, we are not going to mistreat you in any way, form or fashion."

Stopping at that point, when he said "in the morning" he was talking about thinking it over and seeing if you really wanted to resign, wasn't he?

A. Yes, sir.

Q. Then he went on:

[p. 48] "I think your loyalty as an employee and your friendship means more than we are talking greenback dollars which will be replaced. Money is not so important that I am going to" -

And this is an expletive omitted. Not going to repeat that. It's like a Nixon tape thing. Has nothing to do with the subject.

"I am not going to - somebody out of their livelihood, but I think you have erred by not coming in here and talking to me. You and I have been close enough as an employee to employer relationship and as friends that you ought to feel comfortable to come in here and talk to me about anything."

Didn't he say that to you on the tape?

MR. VENICK: At this point I am going to object because, as Mr. Chernaau pointed out, there is incomplete transcript of this document. Therefore, whether part of it is introduced or the whole thing, we can't get to any of it because it is not a complete document. All we can do is testify about her recollection of the conversation.

MR. CHERNAU: I am cross examining her about a transcript that she produced from a tape that she made without this man knowing it, and I have the right to cross examine.

THE COURT: I will overrule the objection. The only thing you left out was the expletive deleted?

MR. CHERNAU: Not expletive, expletive.

THE COURT: Well, however you want to pronounce [p. 49] it.

MR. CHERNAU: Is it expletive?

THE COURT: I don't know. Is that all you left out?

MR. CHERNAU: That's all I left out.

THE COURT: All right, she can answer the question. Mr. Venick, you can cross examine about that and bring out that it may have left out something that he didn't declare to the court.

You may answer the question.

A. Yes, sir, he did say that.

Q. Now, also in this tape, didn't he say to you that he didn't treat you differently than anybody else, he said

the same things and it was all a joke. That he never knew you took them seriously. Didn't he tell you that?

A. He joked with everybody. Yes, sir, he did. But he didn't say to the male managers to get quarters out of their pocket and didn't tell them to pick up things off the floor and he didn't call them dumbass men.

Q. We are going to talk about that in a minute if you will just let us go through this now. Didn't he say to you - and he didn't know he was being taped -

"Any time, Teresa, - you have been around me long enough to know that at any time I am serious that I will call you in here and we'll talk about it. And if I am not serious about it, it goes over about like what you were in here that day and I said I [p. 50] really didn't give a" - expletive deleted. "I mean, I didn't mean that in a demeaning way. I say the same things to Jay. He doesn't take it the way you take it, and if he does he doesn't say anything to me."

He said that, didn't he?

A. Yes, sir he did.

Q. Didn't he say to you in a question form, "I play favorites?" And wasn't your answer, "No, I didn't say that"? Isn't that in the tape?

A. Yes, sir.

Q. Now, let's see if on the tape where you talk here a little bit about your review, all right?

A. Yes, sir.

Q. And I am going to ask if he said this to you.

MR. VENICK: Your Honor.

Q. "I think you have gotten upset and let a lot of things" -

MR. VENICK: Your Honor, if Mr. Chernau is going to be reading from this document, I would appreciate it very much if he would tell me what page he is on because all the pages are numbered.

MR. CHERNAU: Well, I am at page 11 now.

Q. Okay, we're back to what he said to you.

"I think you have gotten upset and let a lot of things grow on you. First of all, you don't come in and tell somebody that you are going to quit and then try to discuss the reasons why. What you should have" [p. 51] "done is was come in and say, 'Hey, look, I have got some problems and we've either got to get them worked out or I am going to have to quit.' When I worked for somebody else, I always said, 'Hey, look.' If you have got a grief or bitch, you give the company an opportunity to straighten it out. And if they don't straighten it out, you have one or two alternatives. You either take it and go with it or you quit. You don't bitch, you don't bellyache, you don't moan, don't mope around and you don't talk to people like you have been doing."

You said, "That is not true." You denied that you have been doing those things; is that right?

A. Yes, sir.

Q. And then he said after talking to you about getting the things straightened out at the bottom of page 11, "First of all, if you decide in the morning, we are not

going to mistreat you in any way, form or fashion." And that's what I had read to you a few minutes ago; correct?

A. Yes, sir.

Q. Okay. Now, didn't you discuss with him and doesn't it appear on this tape about your job and running your department, and didn't he say that, you know, that he had confidence in you to run your department and you said, "I do have freedom of running my department", and he said "Sure you do" and you said "I agree"?

A. That's right. I just said a little while earlier that he hadn't complained or reprimanded me about how I ran my department. That's exactly right.

[p. 52] Q. In describing himself, in describing himself as the chief of this business, didn't he say to you - I guess it is page 14. It is not on the thing.

"I don't know why some of these people around here - I guess it is hard for me for some reason. I never looked at myself like I owned this company, and I am just an employee here like everybody else. I don't look at it like they look at me. I can't understand that.

Then you said, "You sign their paychecks", and he said, "Well, I know that"; correct?

A. He said that.

Q. Then at page 15, didn't he explain to you the business of rentals and what was going on with rentals and what was going on with compensation? Didn't he explain that to you?

A. He said that eventually it was going to have to change, my compensation was going to have to change, but he never told me that until that day.

Q. Did he say to you:

"Now, a certain amount of rentals you are going to increase a certain amount. Probably what I was trying to tell you was a certain amount. Now let's make sure the damn thing is out before you throw it in the garbage can. Teresa, rentals, rental income a lot of times what I am trying to say is that as your customer base increases, your ability for increased rentals is up."

And you said:

"I agree that a certain amount of rentals we" [p. 53] "are going to get because our name is in the phone book. A certain amount of rental calls we are going to get because that's all they do with us is rentals. I also agree that a lot of rentals are due to the fact that salesmen call on them. We sell them new trucks."

And didn't he say:

"We get between 50 to 75 to a hundred new customers a year, and that is a basis for additional rentals. What we looked at was the point I was making was when you came here we had a certain base, okay?"

And you said, "Uh-huh." And he said:

"And we paid you. And what happened is that we have had added all these trucks and a lot of it is your effort, a lot of it is salesmen's effort and a lot of it is simply because we had them

available. What I am alluding to was that at some point in time we will have to look at that nut that we put you on originally. We'll have to change the commission plan to some degree. What degree that will be, I don't know, but sometime in the future as you can see if we have a hundred rental trucks, the compensation would be a hell of a lot more than if it had to."

And you said:

"I don't have a problem with that. I understand that."

Is that an accurate statement?

A. Yes, sir.

Q. And at page 17, which is the last page that was furnished to me under my discovery request, you and Charles Hardy were talking about the behavior that went on at the office; correct?

[p. 54] A. Yes, sir. I don't know. I am answering yes, sir. I don't have a transcript.

Q. Well, your lawyer can give you one if he wants to.

A. Okay.

Q. Didn't he say to you - and he didn't know he was being taped; right?

A. That's correct.

Q. "Well, I think you have been taking it personally. I have heard Jay say some things and I have said some off color things to you that probably I shouldn't have said."

MR. VENICK: Your Honor, I object to the hearsay within the document.

"I didn't mean to hurt" -

MR. VENICK: Hearsay.

THE COURT: Not being offered for the truth of the matter. Just being offered that it was said. Go ahead.

MR. CHERNAU: I don't know where I am. Can I start over?

THE COURT: Yes.

MR. CHERNAU: I will do it fast.

THE COURT: All right.

Q. "Well, I think you have been taking it personally. I have heard Jay say some things and I have said some off color things" [p. 55] "to you that probably I shouldn't have said. I didn't mean it to hurt you. I never - if I had seriously wanted to have a sexual encounter with you, I guarantee you one thing. I never would have alerted the company that we were going to the Holiday Inn. Those things are just said and they weren't intended to be taken personally which you take personally."

Is that an accurate statement?

A. I did take them personally. Yes, sir. I did.

THE COURT: Was that the words spoken by Mr. Hardy and by you in that conversation? That's really his question.

THE WITNESS: Part of it is, yes, sir. What he read was spoken, yes, sir.

A. But there are a lot of things that obviously were spoken that you didn't read, Mr. Chernau.

Q. Feel free to put it all in at any time you like and let the Court read it or listen to the tape.

Fact is - let's get back to business - is that Forklift sells batteries, don't they? Part of the business is selling batteries?

A. Forklift Systems is not or at least they weren't when I was employed there a battery distributorship, no, sir. They purchased electric - they purchased batteries from other from battery representatives for their electric lift trucks. They are not in the battery business. They do not service them, nor do they sell them [p. 56] directly. They have [sic] haven't got a franchise. They buy them from battery people.

Q. Let me see if I can ask you a simple question. Forklift Systems and your husband's business, Cellular Power, called on the same customers, didn't they?

A. Not all the same customers.

Q. Not all, but a lot of the same people were called on?

A. If a customer uses electric lift trucks, my husband would call on them, yes, sir.

Q. Thank you. Now on this travel business about the cars and trucks or whatever.

A. Okay.

Q. You were allowed mileage, weren't you?

A. Yes, sir, I was.

Q. Did you ever put in a request for any mileage?

A. Yes, sir, I did.

Q. Were you paid the mileage?

A. Yes, sir, I was.

Q. Well, did you ever put in for mileage and you weren't paid?

A. No, sir.

Q. Now let's talk about the treatment. In your discovery deposition I asked you specifically, "You are not saying that anyone really harassed you sexually. What you [p. 57] are alleging is a hostile sexual environment." Is that an accurate statement?

A. I think I did allege that someone sexually harassed me. That's why we are here, Mr. Chernau.

Q. Let me see see if I can refresh your memory about why you think you are here.

THE COURT: Let me see if I can straighten this line of questions out, Mr. Chernau.

The law under Title VII, Mrs. Harris, is that with respect to these types of cases based on sex, there are two types of sexual harassment. One is what's called the quid pro quo that courts recognize. That is that sexual favors are demanded of the female by a male supervisor or employer in return for an employment benefit such as being hired.

THE WITNESS: Oh.

THE COURT: Or such as getting a raise or such as getting some other benefit that the female seeks in the employment. That's called I give you this if you give me sex.

The other is a sexual harassment hostile environment type case where there is no demand that in order to make an advance or get pay that you, the female, perform sexual acts with respect to the male employer but that just the work place is so hostile, go around pinching [p. 58] people or making them bend over putting reaching and retrieving coins out of front pockets and things like that, and that it just becomes so uncomfortable even though it is not a requirement in order to maintain employment or to get a raise, that type of case. So that's what he is talking about.

THE WITNESS: Okay

THE COURT: Now since she knows what the legal terms are and what two kinds of cases the law recognizes under Title VII, you can reframe your question.

MR. CHERNAU: Thank you.

Q. So what you are saying is that the environment itself you were uncomfortable in the environment, that it was a hostile environment. That's what you are saying, isn't it?

A. It was hostile, yes, sir.

THE COURT: As I understand your lawsuit and your pleadings, there never was - you do not allege that there ever was by Mr. Hardy or anybody a requirement

that you perform sexual acts in order to maintain your employment?

THE WITNESS: No, sir.

THE COURT: Or to get a raise or more commissions?

THE WITNESS: No, sir. I never alleged that.

[p. 59] THE COURT: All right.

Q. Now, going on with this hostile environment, there were a lot of jokes made and told?

A. Yes, sir.

Q. And there were a lot of jokes told after work when you sat around and drank with the boys, wasn't there?

A. Yes, sir.

Q. And in regard to going to get coffee, anybody would bring coffee in if somebody else was going to get coffee to get me a cup of coffee, anybody would get it, wouldn't they? I mean, that's not a big thing?

A. There is a difference, Mr. Chernau, in everybody sitting there and asking someone to go get coffee and being specifically called from your office to go get coffee.

Q. And you never saw any man buzzed and said, "Could you bring some coffee? We are in a meeting"?

A. No, sir.

Q. You felt that you were being harassed?

A. I didn't consider that - we are getting back to the sexual favor thing. I just didn't like it. I didn't think I

should have to go stop what I was doing in my office to go cater to Charles Hardy needing coffee.

Q. All right.

A. Dick Reed wasn't asked to do that nor was David [p. 60] Matthews, and we both - the three of us sat fairly closely to Mr. Hardy.

Q. Did you often have management meetings at Holiday Inn that's near the office?

A. We did have them at Holiday Inn sometimes, yes, sir.

Q. So you took - we'll talk about your raise at Holiday Inn, that statement, as a dead serious statement, not a joke because you always went over there for your meetings anyway?

A. I didn't say that Mr. Hardy asked for sexual favors. Mr. Hardy said that to me, "Let's go to the Holiday Inn and negotiate your raise." We didn't go to the Holiday Inn to have reviews. They were held at the office.

Q. Do you know who J. R. Greg is?

A. Yes, sir, I do.

Q. Isn't J. R. Greg the man that started the funny line about getting quarters out of someone's pocket?

A. I don't recall that.

Q. Were you never told by anyone that that was a joke line around the office because of an event that occurred with a man who was a homosexual?

A. I don't re - I don't remember that. That could have happened, but I don't recall J. R. Greg ever saying that.

[p. 61] Q. Did you recall anybody explaining why that's a funny line?

A. No, sir.

Q. To them at least where it emanated from?

A. No.

Q. Never heard that that was a line used around the office as a joke?

A. It was - I did hear it was a joke. I mean, Charles Hardy said it was a joke. But I never heard that story that I recall, no, sir.

Q. But everybody knew it was a joke. Everybody knew it was a joke, didn't they, they laughed? Isn't that correct?

A. I didn't laugh.

Q. But you just said everybody knew it was a joke, but you don't know where the joke line came from, right? Is that a fair statement of what you just answered?

A. I said that Mr. Hardy said it was a joke and that I did not find it humorous and I don't know where it came from.

Q. All right. Now, do you remember a young girl named Terri Curtis?

A. Yes, sir, I do.

Q. Wasn't it Terri Curtis who volunteered one day in I think the coffee room about the effect of corn on the [p. 62] growth of a woman's bosom?

A. She said that, yes, sir.

Q. So that was something she said and everybody laughed, didn't they?

A. Terri Curtis told us that story. Terri Curtis was a little girl from Cheatham County from the country. She was 19 years old. And someone had told her that story, and in her naivete she asked us because she wanted to know if that was in fact true or not. That - she did say that. She told us that story. But Terri Curtis did not ask me if I ate corn or ask Charles Hardy if he ate corn or anybody else.

Q. When Terri Curtis told that story and had asked, did you laugh? Did you think that was funny that she had asked that in her naivete?

A. I thought that was funny that she asked that, yes.

Q. Now, Mr. Venick - and I want you to think back a minute. Mr. Venick asked you what effect all this had on you.

A. Yes, sir.

Q. And you said you drank all the time and you cried and that you were devastated by this conduct that you didn't complain of for two and a half years. And then he asked you this: "You had no problems I mean other than the [p. 63] work, you had no problems with your family at that time?" And you answered no, didn't you?

A. That's correct.

Q. Is it not true at that time that you were going through and may continue to go through a terrible thing with one of your sons? About that time hadn't your son been arrested for stealing and hadn't Mr. Hardy told you to call me about it?

A. No.

Q. No?

A. That's a lie.

Q. That's a lie. All right. How many sons have you got?

A. I have got two sons.

Q. What are their names?

A. Their what I call them or their legal name?

Q. Legal name.

A. Ronnie Lee Nixon, Junior.

Q. Wait just one second. Okay. And who is the other?

A. Jonathan Trever Nixon. And that's E-R, not O-R.

Q. And not one of these boys at that time not one of them were in any difficulty with stealing or dope or anything?

[p. 64] A. My oldest son was asked by a friend to - he was 18 to pawn a camera for him. The guy that asked him to wasn't 18, and my son did it. And as it turned out, it was stolen. There were no charges brought against my

son. He was never arrested. I did tell that to Mr. Hardy in confidence because I had to leave to go home. And I don't think when that happened, which was January, February of 1987, I don't think Mr. Hardy knew Mr. Stan Chernau at that time.

Q. In May or August of 1987 or any time thereabouts or during the period of time we are talking about in 1987, did you have a son that got into any difficulty with the law?

A. Pardon? Would you ask that again?

Q. Yeah, I said it too fast. During 1987 did any of your children have any trouble with the law?

A. No, sir.

Q. Okay. Now, as I understand it, you decided you were going to resign. You wrote a letter and you gave it to Dick Reed?

A. That's true, yes, sir.

Q. Why didn't you give it to Charles Hardy?

A. I didn't want to talk to Charles Hardy any more. I was so mad and upset with Charles Hardy that it was all I could do to walk in the door. I didn't want to [p. 65] talk to him. I didn't want to look at him. And I had nothing else to say to Mr. Hardy. I made myself perfectly clear in August. And he promised and he didn't keep his promise, and I had nothing else to say.

Q. Now, Mr. Hardy was your immediate supervisor; right?

A. That's correct.

Q. Why didn't you write "Charles Hardy" on an envelope and go slide it under his door? Why did you go to Dick Reed?

A. I wasn't going to be there the next day. I couldn't. I would leave before Charles Hardy.

Q. Is that your explanation?

A. Yes, sir.

Q. Now, in regard to bonuses, it seems to me that when you filed your EEOC claim you had some things that you said. For instance, is it your testimony today that you did or did not receive a bonus in 1987?

A. I did receive a bonus in 1987.

Q. Was the check - you don't remember the check number. Was it in the amount of 3,000 dollars?

A. Yes, sir.

Q. Was it written on Sovran Bank?

A. I - yes, sir.

Q. Was it on or about June 12, 1987?

[p. 66] A. I don't remember. It was some time in June that we got it.

Q. But you told the EEOC that you hadn't gotten it, didn't you?

A. I didn't say I didn't get it.

Q. You didn't. What did you tell the EEOC?

A. I told the EEOC that mine wasn't the same as everybody else's.

Q. Okay.

A. I didn't say I didn't get a bonus. I have never said I didn't get a bonus.

Q. Weren't you making more money than most of the people out there?

A. Mr. Chernau, I don't know what they made. They didn't tell me how much money they made, and I didn't tell them how much I made. I didn't have any way of knowing that.

Q. Well, then how do you know you weren't being paid the same basis or the same amount as the other people?

A. Charles Hardy told me my bonus was different. That's how I knew it.

Q. Let me ask you this question. Let me ask you this question. If the facts establish from the hard numbers from these financial statements and everything been written down around here and gone through with with [sic] [p. 67] discovery, if those numbers show that in fact you were making more money than most of the people out there, most of whom were males, would you then change what you think? Would that affect you in any shape, manner or form about what you think about your compensation?

A. It is not still not going to take - it is not going to change the fact that I was to be given a performance review. I was not. It is not going to change the fact that my bonus was less than the other tenured managers. That's not going to change anything.

Q. All right. We are now down I guess reducing it down to the bonus review, and I am going to ask you going back to the tape transcript -

A. There is not a bonus review.

Q. I thought you just said bonus review?

A. No, sir. I said bonus. Your bonus is entirely different than your review.

Q. Right. And that's what I was going to point out to you. There is no such thing as a bonus review. It is just a review.

A. You receive a review, exactly.

Q. Okay, so we are on the same wavelength here now, and I am going to you ask you if on the tape you didn't say "I didn't get a review" and he said "Yes, you did. It is not a formal thing"?

[p. 68] A. Uh-huh.

Q. Didn't he say that: "It is not a formal thing"?

A. Yes, sir, he said that. But on down through the tape, Mr. Chernau, if you will read the rest of it to the Judge -

Q. Your lawyer -

A. - he admits I didn't get a review.

Q. That's your interpretation of the tape. Feel free to give the tape in any time.

A. He says it.

MR. VENICK: Can Mr. Chernau please tell me where he is reading from the transcript?

MR. CHERNAU: Yes, but in order to save time I will show it to you when I get a chance.

MR. VENICK: I'd like to know right now.

THE COURT: Show it to him right now.

Q. Do you know where it is on here?

A. No, sir, I don't.

Q. You agreed it was on there though, didn't you? One second. I'll find it.

MR. CHERNAU: All right, page 2.

THE WITNESS: May I have a copy, please? Thank you.

Q. I'm at the bottom of page 2. Charles Hardy [p. 69] said:

"Q. You did get a review.

"A. When?

"Q. You and I sat down in here. I mean, a review is not something elaborate. I don't know what you have got in your mind as far as a review, but you and I sat down and talked it over what were we going to do with this year. Now, Teresa, we did.

"A. When? I never got a review.

"Q. Yes, you did.

"A. No, I did not."

You are talking knowing you are taping, and he is talking not knowing he is being taped; right?

A. Him telling the truth has got nothing to do with whether or not I got a review. He also says on page 3 I said, "I never got a review." He says, "Well, I'm sorry for that."

Q. All right. Now the tape goes off. You get up out of the office. He is trying to tell you think about it. Don't quit like this. It is not a smart thing for you to do, and if you come in tomorrow morning and say you are going to quit anyway, don't worry about it. Right, that's what's happening right here in that room?

A. That is what he said.

Q. And didn't he walk out of the room with you out of his office as you were going to make your way to the front door and exit the building?

A. Don't recall that.

Q. I am not going to go through the discovery [p. 70] because it takes too much time, but I will ask you this. Did he not encourage you to stay?

A. He told me that this would stop. That he was sorry. And I said I would think about it.

I came back to work. I did my job.

Q. Before we get.

A. I -

Q. Before we get there, still got you leaving the building.

A. I did what I promised to do, Mr. Chernau; Mr. Hardy did not.

Q. Just a moment. I am trying to get you out of the building.

MR. VENICK: Your Honor, can the witness finish her testimony?

THE COURT: Yes, I will accept the answer, Mr. Chernau. Now then you may ask another question.

Mrs. Harris, let me just advise you just respond to his questions and answer it just as directly as you can and let it go at that. Your lawyer will get up on redirect and I am sure will ask you questions and allow you to explain these things.

THE WITNESS: Thank you.

BY MR. CHERNAU:

Q. He was encouraging you to think about it and [p. 71] felt it would probably be a mistake if you quit, didn't he?

A. He did say that to me, yes, sir.

Q. And when you got home that night you talked about it with your husband, didn't you?

A. Yes, sir, I did.

Q. And did you want to resign?

A. I loved my job.

Q. Did you tell your husband that your inclination was to resign and he talked you out of it?

A. I told my husband that my gut feeling was that it wouldn't stop and I was afraid that it wouldn't stop. But

that he did - Larry said, "He sounds sincere", and I said, "Yeah, he does sound sincere, but my gut feeling is it's not going to stop."

Q. Were you married to Mr. Harris in 1987?

A. Yes, sir, I was.

Q. Were you married to Mr. Harris in 1986?

A. Yes, sir, I was.

Q. Were you married to Mr. Harris from April '85 on?

A. No, sir, I was not.

Q. Well, during most of the time you were employed at Forklift, were you married to Mr. Harris?

A. Most of the time, yes, sir.

Q. Did you ever complain to -

[p. 72] THE COURT: What was the date you married Mr. Harris? That will stop all those questions.

THE WITNESS: February 28, 1986.

THE COURT: All right.

Q. From February '86 to October '87 -

A. Well, not until October '87, Mr. Chernau. I am still married to Mr. Harris.

Q. Not - I don't understand.

A. You said from February of '86 until October of 1987 when you are talking about my marriage. I am still married to him.

Q. Okay. And your gut feeling is that you should leave. He said you should stay?

A. I was apprehensive about it, yes, sir. And as it turned out, I was right.

Q. I believe that's all.

REDIRECT EXAMINATION

BY MR. VENICK:

Q. I believe you testified on cross examination about what happened in your meeting with Mr. Hardy; is that right?

A. Okay. Yes, sir.

Q. And Mr. Hardy told you that he would do what with respect to his behavior?

A. He told me he would stop.

[p. 73] Q. And was that a significant statement to you?

A. I believed him. I wanted to believe him. I loved my job and I wanted it to stay that way, but he didn't stop.

Q. And in the course of the discussion you had with Mr. Hardy, what did he say about his prior behavior?

A. He said he was sorry and he didn't mean any of it in a demeaning way and he was sorry he didn't give me a review.

And when I was explaining to him - and this part is not on the tape. When I said, "Charles, would it upset

you, would you like it if men talked to Sandra and Kathy the way you talk to me?", and he said, "No, I wouldn't."

I said, "Well, I don't like it either."

Q. And there is not a full and complete transcript of that conversation?

A. No, sir, there is not.

MR. VENICK: No further questions, Your Honor.

MR. CHERNAU: You may - excuse me. I have no further questions.

(WITNESS EXCUSED.)

* * *

THE COURT: Next witness.

[p. 74] DIXIE SHADRAKE was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VENICK:

THE COURT: Once seated, state your full name.

THE WITNESS: Dixie Shadrake.

THE COURT: And spell your last name.

THE WITNESS: S-H-A-D-R-A-K-E.

Q. Ms. Shadrake, you were formerly employed at Forklift Systems; is that right?

A. Yes.

Q. And you held a position as receptionist and worked in the Accounting Department; is that right?

A. Yes.

Q. And you left to take another job; is that correct?

A. Well, I just quit and then I got another job later.

Q. Now, during the course of your employment at Forklift Systems, did you ever observe Mr. Hardy, Charles Hardy, throwing quarters on the floor in front of female employees for them to retrieve?

A. He did it, but he did it as a joke.

Q. How many times did he do it?

A. I don't recall.

[p. 75] Q. Can you describe how it went?

A. No. Everybody just laughed and . . .

Q. What did Mr. Hardy say?

A. That's, I mean, nothing really. Whenever he did it, that was it. Everybody just kind of laughed. It was just a joke.

Q. And did you ever hear him ask female employees to retrieve coins out of his pocket?

A. No, I never have heard him say that.

Q. Did Mr. Hardy ever make any comments about clothing that female employees had?

A. Yeah, I guess. Everybody did if you wore something nice.

Q. What did Mr. Hardy say?

A. If you wore something nice, people would comment on it, not just him.

Q. Did Mr. Hardy ever make a comment about some female wearing tight clothes, tight clothes blouses one day?

A. Yes.

Q. What did he say? I know this is embarrassing to you, Ms. Shadrake, but very important the judge hear this. Only people that are here right now, Mr. Hardy who already knows it, Mrs. Harris who knows about it, judge and some court people. So if you just tell the judge what [p. 76] happened, we'll get through it quickly as possible.

A. He just mentioned about somebody wearing tight clothes and turning down the air conditioning. I mean, that was it. That's the only thing I heard -

Q. Somebody being whom?

A. I don't know who exactly.

Q. Well, was he talking about men?

A. No.

Q. Talking about the women?

A. Yes.

Q. Why do you think he was talking about wearing tight clothes and turning the air conditioning down? What significance you think that would have?

A. Because it would be cold in the room and the woman would have a tight shirt on, tight blouse.

Q. And it would effectuate how their breasts looked through the shirt?

A. Yes.

Q. And that's how you took it?

A. Yes.

Q. Did you ever hear Mr. Hardy make any other comments about any other female's body parts who worked there?

A. No.

MR. VENICK: No further questions, Your Honor.

[p. 77] MR. CHERNAU: Can I ask just from here?

THE COURT: No.

CROSS EXAMINATION

BY MR. CHERNAU:

Q. Did you consider - I am only going to ask you two questions. Did you consider while you were at Forklift Systems that there was a sexually hostile place to be?

A. No.

Q. Was the things that were done there always in a joking manner and understood by everyone to be joking?

A. Yes.

Q. I have no further questions. You may step down, and thank you.

(WITNESS EXCUSED.)

* * *

STEPHANIE VANNS was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VENICK:

THE COURT: State your full name.

THE WITNESS: Stephanie Ann Vanns.

THE COURT: Spell your last.

THE WITNESS: V-A-N-N-S.

THE COURT: Mr. Venick.

Q. Ms. Vanns, you were formerly employed by [p. 78] Forklift Systems; is that right?

A. Yes, sir.

Q. And you worked as I believe Mr. Hardy's secretary?

A. Yes, sir.

Q. And you were terminated from your employment in February of '88; is that right?

A. Yes, sir.

Q. And right now you operate a daycare center in your home; is that correct?

A. Yes, sir.

Q. During the course of your employment did you have occasion to hear Charles Hardy ask female employees to retrieve coins from his pocket?

A. Yes, sir.

Q. Did he do that on a regular basis? Did it happen more than once?

A. Regular as in every day?

Q. No, happen more than once?

A. Yes, sir.

Q. Did it happen on a monthly basis at least?

A. I don't know how many times.

Q. But it happened on a number of occasions?

A. I have heard it more than once.

Q. Was some of that directed towards you?

[p. 79] A. Yes, sir.

Q. Some of that directed towards Teresa Harris?

A. I don't remember him saying it directly to her.

Q. You don't recall seeing that?

A. Correct.

Q. And do you have any recollection of hearing Mr. Hardy say to Teresa Harris, "You are a woman. What do you know?"

A. He could have. I don't remember.

Q. Okay. What about, "We need a man as a rental manager"?

A. I don't remember hearing that.

Q. Now, do you recall giving a statement to the Equal Employment Opportunity Commission?

A. Yes, sir.

MR. CHERNAU: Have we been furnished it?

MR. VENICK: Be furnished it right now.

MR. CHERNAU: May it please the Court, if it is a document being relied on, I should have seen it before now.

MR. VENICK: Not being used as an exhibit; to be refreshed recollection.

THE COURT: Give him a copy.

MR. VENICK: I plan to.

THE COURT: Right now.

[p. 80] MR. VENICK: Okay.

Q. Okay. Ms. Vanns, would you please look at that document. Just look it through.

A. Okay.

Q. And you signed this?

A. Uh-huh.

Q. On the back, I believe?

THE COURT: Answer yes or no. Uh-huh doesn't come up well in the record.

A. Yes, sir.

Q. August 12 of '87?

A. Yes, sir.

Q. In reviewing that document, does that refresh your recollection about anything Mr. Hardy may have said to about "What down [sic] you know; you are a woman"?

A. I do have on there that he said it.

Q. Did it also refresh your recollection about him saying, "We need a man as a rental manager"?

A. Yes, sir.

Q. What is your recollection as it is refreshed now?

A. I would say that he would say it like if - it is hard to remember. It was several years ago. If maybe like something went wrong or something was not exactly the way it was supposed to be or maybe if she made a comment [p. 81] that he didn't agree with.

Q. After that he would make the statement, "We need a man as a rental manager"?

A. Yes, sir, probably.

Q. Now, did you recall Mr. Hardy ever making any comments about female body parts?

A. Like about their bodies?

Q. Like about their breasts or their rear ends?

A. To me or to -

Q. Well, to you or other females.

A. He never made any comments about my body.

Q. Did he ever make any comments about Mrs. Harris' body?

A. Not to me, he didn't.

Q. Did you ever hear him say it?

A. To her?

Q. Yes.

A. No, not that I recall. I don't remember. I am not saying he didn't. I do not remember.

Q. Did you ever hear him say anything to any other females at Forklift Systems?

A. Yeah, I have heard comments that he made about other people.

Q. Would you please tell the Court what those comments were?

[p. 82] A. Like I heard if somebody walked in and had large breasts, I have heard him say, "Boy, she must have ate a lot of corn; she has large breasts" or something like that making a joke about her having large breasts.

Q. Did you hear him say that more than once?

A. Well, I would say if more than one person walked in like that. I mean, I can't count exactly, yes, he said this so many times. If somebody walked in with large breasts and he was standing there, sometimes he would make a comment about it, like I said, joking around.

Q. And was there also an occasion when Mr. Hardy would throw objects or coins on the floor and have female employees pick them up?

A. Yes, sir. Most of them never picked them up.

Q. Did that happen to you?

A. Yes, sir.

Q. Did it happen to Mrs. Harris that you saw?

A. I don't remember him saying it to her. I know he said it to me before.

Q. He said it to other female employees?

A. Yes, sir.

MR. VENICK: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. CHERNAU:

Q. Ms. Vanns, did you find that what was going on [p. 83] around that office while you were there was mostly joking?

A. That's the way I took it when he'd say anything to me.

Q. Did you find it offensive or as a joke when he talked to you about something on the floor or a quarter in the pocket?

A. I felt it towards me as being a joke because usually he would say it like after work when everybody was drinking beer and there was a lot of people there. Personally I didn't take offense.

Q. Did you take offense at any of Teresa Harris's behavior?

A. Well, she worked with me for long periods of time. Yes, I did sometimes; no, I didn't sometimes.

Q. When you took offense at some of her behavior, what kind of behavior was it? How did she behave?

A. Well, I would say like everybody has their good days and everybody has their bad days. Some days we didn't get along. We worked at a close network like she would work here and I worked here, and a lot of times we didn't get along with our work. No, we didn't.

Q. How was her language? Did she curse a lot?

MR. VENICK: Object to that. That's beyond the scope of direct and not relevant.

THE COURT: Do you want to take her as your [p. 84] witness and open it up and go into it, or are you still on cross examination?

MR. CHERNAU: I'll take her as my witness. Makes no difference to me.

THE COURT: She is now his witness.

DEFENDANT'S PROOF

DIRECT EXAMINATION

BY MR. CHERNAU:

Q. How was Teresa's language? Did she use a curse word like every other sentence?

A. Yes, sir.

Q. Yes, sir?

A. Yes, sir.

Q. Okay. And did she have a good attitude or a bad attitude about work and her fellow employees?

A. Some days she had good attitude and some days she had bad.

Q. When she had bad attitudes, how did she conduct herself?

A. Well, she was in bad mood like other people get in a bad mood.

Q. Did it appear to you that she was treated like or conducted herself like one of the boys at the office?

A. A lot of times, yes.

Q. Did you find that anything that was going on [p. 85] there and the jokes that you have alluded to and Mr. Hardy, you didn't find them offensive, did you?

A. No, I did not. Not to me.

Q. You may step down.

MR. VENICK: Excuse me, Your Honor.

THE COURT: Okay. Mr. Chernau, I will tell the witness when to step down.

MR. CHERNAU: I'm sorry, Your Honor. I apologize, Your Honor.

THE COURT: Okay.

CROSS EXAMINATIONBY MR. VENICK:

Q. Just one more question. Of course different people take statements different ways. Isn't that right?

A. That's correct.

Q. And the fact that you weren't offended doesn't mean that somebody else wasn't?

A. That's correct. That's why I said I personally was not offended. That don't mean somebody else was not.

MR. VENICK: No further questions.

THE COURT: Mr. Chernau, anything else?

MR. CHERNAU: Nothing else.

(WITNESS EXCUSED.)

* * *

THE COURT: Next witness. We've got still some [p. 86] time here.

MR. VENICK: Your Honor, at this time I would like to read into the record some matters from request for admissions and interrogatory responses.

THE COURT: All right.

PLAINTIFF'S PROOF (Resumed)

MR. VENICK: First is Defendant's Response to Plaintiff's First Request for Admissions, admission number 3:

"Please admit that Charles Hardy in front of a group of other employees of Defendant and Nissan's representative stated 'let's go to the Holiday Inn to negotiate your raise.' "

Response: "It is admitted that Charles Hardy made a statement to the effect of going to the Holiday Inn to negotiate the raise and that the meetings were held among personnel of the Defendant at the Holiday Inn on numerous occasions and that statement was made in the presence of a number of other employees, some of whom have executed affidavits in regard to this subject matter. Charles Hardy denies any statement was made to the Plaintiff in regard to Holiday Inn that had a sexual harassment basis or in any way was offensive."

MR. CHERNAU: Can I interrupt for one second so I can follow this? You did two waves of discovery, and I [p. 87] want to follow you. I don't know which wave you are on.

MR. VENICK: Defendant's Response for Plaintiff's First Request for Admissions, admission number 3.

THE COURT: Go ahead.

MR. VENICK: Your Honor, the second has to do with response to interrogatory 13, Answer to Plaintiff's Second Set of Written Interrogatories, Request for Production of Documents and Request for Admissions.

MR. CHERNAU: I need to find that.

MR. VENICK: I will wait for Mr. Chernau to find it.

THE COURT: No, go ahead. The Court waits for no one.

MR. VENICK: Question, "State separately the annual salary and bonus to each of the following managers of Defendant for every year beginning January first, 1984."

Answer:

"1. Jay Jackson was a salesman in 1985, '86 and '87 and was not a manager.

2. Tom Means left employment in 1984.

3. Teresa Harris. Objected to on the grounds that this is the Plaintiff in this case and the information is as readily available to her as to the Defendant.

4. Gary Watson was a mechanic receiving" [p. 88] "hourly compensation during the years 1985, 1986 and '87.

5. The question concerning Rose Ann Salisbury is objected to since she did not begin employment until January 22, 1988, after Plaintiff left employment with the Defendant and, therefore, any information is irrelevant.

This objection pertains to the following responses of these interrogatories.

6. Mike Moseley in 1985 received 2400 dollars per month plus a 3500 dollar bonus. In 1986 he received 2400 dollars per month plus 3900 dollar bonus. In 1987, received 2520 per month plus a 4500 dollar bonus. Plaintiff was no longer employed by the Defendant during 1988.

7. David Matthews in 1986 received 2,000 dollars per month plus no bonus. In 1987 received 2100 dollars per month plus 2,000 dollars bonus and did not begin receiving commission until August 31, 1988, after Plaintiff left Defendant's employment.

8. Bennie Lawson received 2470 per month plus a 3500 dollar bonus in 1985, 2470 per month plus a 3100 dollar bonus in 1986 and 2470 per month plus 4,000 dollars bonus in 1987.

9. John Garrett received 2,000 dollars in 1985 and no bonus.

10. Kathy Kernell received 1300 dollars per" [p. 89] "month and no bonus in 1985; 1400 dollars per month plus 3900 dollars in 1986; received 1400 dollars per month plus 4500 dollar bonus in 1987.

These responses are supplementary to interrogatory 10 originally submitted to the Defendant in this cause."

THE COURT: Okay, now your next witness.

MR. VENICK: Dick Reed, Your Honor.

THE COURT: All right. Is this going to be a long witness?

MR. VENICK: He might, Your Honor.

THE COURT: Let's just wait until 1:00 o'clock.

MR. CHERNAU: May I make a statement before we break?

THE COURT: Yes.

MR. CHERNAU: These interrogatories that were just read in, I can't remember if Mr. Venick had

submitted to the Court the stipulation that we have entered into with the chart and the compensation and all that.

THE COURT: That's in.

MR. VENICK: That was the first thing we dealt with this morning, and it did not include any bonus information. That's why I read that into the record.

MR. CHERNAU: Fine.

(A luncheon recess was taken.)

[p. 90]

1:00 p.m.

AFTERNOON SESSION

(Pursuant to the adjournment for the luncheon recess, court was resumed.)

THE COURT: Mr. Reed is your next witness, I believe you said.

MR. VENICK: Yes, Your Honor.

RICHARD G. REED was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VENICK:

THE COURT: Have a seat and then state your full name after you get seated.

THE WITNESS: Richard G. Reed.

THE COURT: Mr. Venick.

Q. Mr. Reed, you currently reside in Lexington, Kentucky?

A. Yes.

Q. And you are currently employed by Louisville Lift Truck?

A. Yes.

Q. As their branch manager?

A. Right.

Q. You were previously employed by Forklift Systems from approximately January '87 through April 15 of [p. 91] '88; is that correct?

A. Yes.

Q. And you were the sales manager?

A. Right.

Q. During the period of time your responsibilities were to supervise sales and for a short period of time you had some responsibility for personnel?

A. Yes.

Q. During the time that you were employed at Forklift Systems, did you have occasion to hear Charles Hardy say to Teresa Harris, "You are a woman. What do you know?"

A. Yes.

Q. How often did you hear him say that?

A. I am not sure how many times. It was more than once.

Q. More than a dozen?

A. I wouldn't say that. I don't know.

Q. Did you ever hear him say similar statements to male managers? Not "you are a woman" but similar statements of that type?

A. No, I never did hear him say it.

Q. You ever hear Mr. Hardy make a statement to Mrs. Harris, "We need a man as a rental manager"?

A. Yes.

[p. 92] Q. Did you ever hear him make similar comments again not saying "we need a man" but to male managers?

A. No.

Q. Did you ever have an occasion to observe Mr. Hardy ask Mrs. Harris to reach into his pockets to retrieve coins?

A. Yes.

Q. Where was that done?

A. As I recall it was in the lobby of the building kind of the outer lobby.

Q. Was that done on more than one occasion that you saw or heard?

A. One occasion that I saw.

Q. Did you have occasion to hear Mr. Hardy make other comments to Mrs. Harris of a disparaging nature?

A. Yes.

Q. What kind of comments did you hear him say?

A. Oh, there were comments about her anatomy or something along that line.

Q. Was this again more than once?

A. Yeah, on several occasions.

Q. Did he ever make any comment that you heard - did he ever make any comment to her that you overheard about how she appeared when she was mad?

A. Yes.

[p. 93] Q. What was that comment?

A. Said that she was sexy when she was mad.

Q. Did you ever hear him make other comments to Mrs. Harris with respect to her body parts?

A. Yes.

Q. What kind of comments were those?

A. There again it was about her anatomy.

Q. Do you recall what part of her anatomy those comments may have been?

A. Her rear end.

Q. How did Mrs. Harris seem to respond to these comments?

A. She took exception to it.

Q. To Mr. Hardy?

A. Uh-huh.

THE COURT: That's a yes?

THE WITNESS: Yes.

Q. Now, do you ever recall Mrs. Harris discussing with you her desire to leave Forklift Systems' employment?

A. Yes.

Q. Do you recall why she said she was going to leave?

A. She said she had just had enough of the situation there and decided she wanted to leave.

Q. When you say enough of the situation, do you [p.94] recall what situation she was referring to?

A. Well, as I remember just the situation of trying to deal with the pressure she was getting there.

Q. What kind of pressure are you referring to now?

A. Some of the statements we just covered here a few minutes ago.

Q. Do you recall how many times she spoke to you about leaving?

A. Several times.

Q. And after the first time she spoke to you, did she in fact leave that time after the first time she mentioned it to you?

A. Well, she said she was going to resign.

Q. Okay. Did she say what else she was going to do? Was she going to talk to Mr. Hardy about it?

A. Yeah, she was going to talk to Charles about it, uh-huh.

Q. What happened after Mrs. Harris spoke to Mr. Hardy?

A. As I recall she decided to try it again for a little while longer.

Q. Do you recall why she said she was going to try it a little longer?

A. That she had talked to him and he was going to try to improve his statements to her in that situation.

[p. 95] Q. And she spoke to you some time thereafter?

A. Pardon me?

Q. She spoke to you again about resigning some time thereafter?

A. Yes.

Q. Did she tell you why she was going to resign that time?

A. Yeah, she said he had slipped back into pretty much the same pattern.

Q. Did she give you anything that second time she spoke to you?

A. Yeah, she gave me an envelope and said it contained her resignation.

MR. VENICK: If we could hand the witness Exhibit Number 4.

THE COURT: You may. There it is right there.

Q. Let me hand you a document that's been introduced Exhibit Number 4. And you never saw the letter, did you?

A. No, I just saw the envelope.

Q. Does that appear to be the envelope that you saw that Mrs. Harris gave you?

A. Yeah, appears to be.

Q. Okay. And what did you do with that envelope?

A. I just held it.

[p. 96] Q. And what did Mrs. Harris ask you about the envelope some time thereafter? Did she ask that you return it to her?

A. Yes, I gave it back to her subsequently.

Q. And did she leave after she had given you that envelope the next day?

A. The next day after she gave me this envelope? I am not sure if it was the next day or not.

Q. Well, did she mention to you whether she was going to resign immediately after she gave you the envelope and changed her mind again?

A. Are we talking about the second time?

Q. Second time.

A. Yeah, she said she didn't feel like there was any use going on.

Q. And then she left some time thereafter?

A. Yes.

Q. Did she tell you why she wasn't leaving the day she gave you the letter?

A. Why she was not leaving?

Q. Going to leave that very day?

A. Well, I remember her statement was she said, "Well, it is just no use. He is still making the same remarks to me."

Q. How would you describe Mrs. Harris's job [p. 97] performance?

A. I'd say very good.

Q. You had occasion to observe Mr. Hardy's attitude towards women while you were employed there?

A. Yes, I guess I could say that.

Q. How would you describe Mr. Hardy's behavior towards Mrs. Harris?

A. How would I describe it?

Q. Yes.

THE COURT: His behavior is what he asked.

Q. Towards Mrs. Harris?

A. Somewhat callous. Somewhat provocative. I don't know how to describe it.

Q. Would you describe it as sexist?

A. Yeah, I would.

Q. No further questions.

CROSS EXAMINATION

BY MR. CHERNAU:

Q. Mr. Reed, were you sworn just before you sat down?

A. Yes.

Q. You are here from Kentucky voluntarily, are you not?

A. Yes, I am.

Q. How many times have you come to Nashville for [p. 98] the various litigations that's been going on between these people and the companies?

A. Three or four, as I recall.

Q. Three or four. And each time you came down voluntarily?

A. Yes.

Q. Now, Mr. Reed, you were terminated at Forklift Systems, were you not?

A. The job was abolished.

Q. And you were terminated, were you not?

A. The job was abolished. If there is no job, I haven't got any job.

Q. Did you quit?

A. No, I didn't quit.

Q. Then were you terminated?

A. I am saying the description given to me at the time was the job was abolished.

Q. And you were unhappy about that, were you not?

A. Yeah, I was unhappy about it.

Q. And you remain unhappy today, do you not?

A. Yes.

Q. And I don't believe that you care for Mr. Hardy very much, do you?

A. No, I don't.

Q. Thank you. When you heard Teresa Harris [p. 99] complain about Mr. Hardy's conduct and you say that she took exception to it, and I take it then for - well, let's see. You were there for nine months while she was there; is that correct?

A. That much or longer.

Q. Well, you came January of '87; she left October first '87.

A. All right.

Q. Sir?

A. Okay.

Q. Sir?

A. Yes.

Q. You have to speak up because she has to take it down. And during that nine months you heard her on occasion say to him "Don't talk to me like that" or things like that or "I don't like that"?

A. Yeah, things of that sort.

Q. Things of the sort that she would complain to him and you would hear her say that?

A. Yes.

Q. Things like "Don't say that to me" and "I don't like that"?

A. Yes.

Q. Are you sure of that?

A. I am positive of it.

[p. 100] Q. Have you – did you read the tape of the conversation that took place between Mrs. Harris and Mr. Hardy? Did you listen to the tape or read the transcript of it?

A. No, I did not.

Q. Did you know that there was a conversation taped?

A. Yes, I did, uh-huh.

Q. Were you in those groups in the group that sat around two, three times a week after work and drank beer and told jokes?

A. Yes.

Q. And was Teresa Harris present many times?

A. Many times, yes.

Q. In the litigation that went on between – you familiar with the litigation between Mrs. Harris's husband, Larry Harris, and Cellular Power and Charles Hardy and Forklift Systems?

A. Yes.

Q. Do you recall the first time you came here to be a witness voluntarily what case it was?

A. I remember coming here, yes.

Q. That's what I meant. Do you recall what case it was the first time you came?

A. I can't pin it down for you exactly.

[p. 101] Q. Do you recall whether you testified or not?

A. No, I didn't testify at that time.

Q. I am going to try to refresh your memory. Did you come down for General Sessions in that little courthouse behind the big courthouse?

A. Yeah, I was over here just across the bridge. I am not familiar with streets any more.

Q. That's the place. And do you recall that there was that case where Cellular Power, Mr. Harris's company, had sued Forklift alleging that monies was owed to Cellular Power by Forklift in regard to equipment and battery rentals? Recall that?

A. Yes.

Q. Now, do you recall that that case was tried, it was appealed and tried in Circuit Court? Do you remember that case?

A. Yes.

Q. Do you recall whether you testified in that case?

A. I believe that is the one I testified at, yes.

Q. You believe that's the one you testified at. Now, weren't you here also when we tried a case in Circuit Court before Judge Gayden? Is that the same case? I am getting mixed up myself.

A. Well, -

[p. 102] Q. How many times have you testified? Did you only testify once?

A. I believe I only testified once, yes.

Q. I couldn't remember. You looked familiar, but I couldn't remember.

A. Yes.

Q. That's that same case; correct?

A. I believe it was, yes.

Q. Were you also voluntarily here from Kentucky in the case that was tried in Chancery Court when Charles Hardy had to sue Cellular Power and Larry Harris on a note that they had defaulted on? Do you remember being in Chancery Court for that, Chancellor Kilcrease's court? Do you recall that?

A. Yes.

Q. Do you recall whether you had testified in that trial?

A. I can't be positive of that. We have had several appearances and I have waited and stood by for the cases, and I can't remember how many times I testified.

Q. Well, you showed up as a witness whether you testified or not?

A. Yes.

Q. And do you recall that that was a case of a suit on a note that Mr. Harris, Cellular Power, had owed to [p. 103] Mr. Hardy and Bennie Lawson?

A. One of those was regarding a note, yes.

Q. You were prepared for that trial to testify as a witness?

A. Yes.

Q. Do you recall that the default on that note - that that lawsuit was filed because the default took place right about the same time that Mrs. Harris left Forklift Systems? Do you recall the time?

A. What is the question?

Q. Okay, that's confusing. There was a suit on a note that you showed up to testify to?

A. All right.

Q. Now, the people bringing the suit were Charles Hardy and Bennie Lawson.

A. All right.

Q. They were bringing the lawsuit over here against Larry Harris and Cellular Power.

A. All right.

Q. That's the one we were in Chancelor Kilcrease's court. When you came over here to testify. Do you recall the facts being that Mr. Harris and Cellular Power had stopped paying the note, had defaulted on the note owed to Charles Hardy and Lawson at or around the same time that Teresa Harris left Forklift Systems?

[p. 104] A. I have no knowledge of when they stopped paying on a note.

Q. You don't remember that fact?

A. I wasn't in position of the facts about when they stopped payment on a note.

Q. You knew they had stopped payment on a note?

A. I knew there was a dispute about the note payments.

Q. And that's why you were here to testify?

A. In that action whatever it was going to be.

Q. What did you know about it that you were going to testify to about that note?

A. I had some knowledge of the inventory and so forth as it went back and forth between the two companies.

Q. And for the nine months that you were there while Teresa Harris was there, January '87 to October

first, '87, it is your testimony that you heard her take exception many times to Mr. Hardy's comments and actions?

A. Yes.

Q. If Mrs. Harris testified that it was not until around July or August of 1987 that she complained to Mr. Hardy, do you think she just forgot about it if that's what she testified to? Do you think she forgot that she had done it but you had heard her?

A. I have no idea. I don't know.

[p. 105] Q. I have no further questions.

THE COURT: Anything further?

MR. VENICK: One second, Your Honor.

REDIRECT EXAMINATION

BY MR. VENICK:

Q. Mr. Reed, you were very forthright in your direct testimony to state that you don't care for Charles Hardy?

A. Uh-huh.

Q. That's correct; is that right?

A. Yes.

Q. But you don't dislike him so much that you would lie, would you?

A. No. I don't lie.

THE COURT: Why was your job done away with? Were you ever told?

THE WITNESS: Something to do with the level of business and what he regarded as possibly my performance in that regard.

Q. And you testified on direct that Mrs. Harris had complained about and took exception to statements made by Charles Hardy?

A. Yes.

Q. Did she make those statements to you or to Mr. Hardy?

[p. 106] A. Well, she made them frequently different places in the area of the business, my office part of the time or someplace else.

Q. So when you were testifying earlier you were saying that you heard those statements as well as some of the statements that were made in response to Mr. Hardy?

A. Yes.

MR. VENICK: I have no further questions, Your Honor.

MR. CHERNAU: I have no further questions.
(WITNESS EXCUSED.)

* * *

THE COURT: Next witness.

MR. VENICK: One second, Your Honor.

Your Honor, that concludes the Plaintiff's proof.

THE COURT: All right. Mr. Chernau, the Defendant's proofs.

MR. CHERNAU: All right, Your Honor. I just wanted to take one quick look to see who he didn't call.

All right, the Defendant calls Charles Hardy.

MR. VENICK: One second, Your Honor, if I may step out a moment.

THE COURT: Come around, Mr. Hardy.

* * *

[p. 107] IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TERESA HARRIS,)	
)	
Plaintiff,)	
)	
vs.)	No. 3:89-0557
)	
FORKLIFT SYSTEMS, INC.,)	
)	
Defendant.)	

TRANSCRIPT
OF
PROCEEDINGS
July 23, 1990
Volume 2 of 2

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[p. 110] The above-styled continued to be heard on July 23, 1990, before the Honorable Kent Sandidge, III, Magistrate of the United States District Court for the Middle District of Tennessee, Nashville Division, when the following proceedings were had, to-wit:

DEFENDANT'S PROOF (Resumed)

CHARLES HARDY was called, and being duly sworn, was examined and testified as follows:

THE COURT: Have a seat and once seated state your full name.

THE WITNESS: Charles Thomas Hardy.

THE COURT: Mr. Chernau,

MR. CHERNAU: May I ask this, Your Honor, prior to starting Mr. Hardy's testimony and the Defendant's defense. It appears to me - and I know that the Court likes to hear both sides, but it appears to me that the Plaintiff has not introduced evidence that rises to the level of maybe that I need to put any proof on. The tape explains what occurred. They chose not to present the tape.

The two witnesses they call turned out to be witnesses for the defendant, Dixie Shadrake and Stephanie Vanns. And appears to me that it would be proper even knowing the overview of these type cases to move for dismissal on the grounds that it just hasn't risen to the [p. 111] level where any proof is necessary

THE COURT: I will keep it under advisement, but I want to hear all the proof.

MR. CHERNAU: Okay, fine. Okay.

DIRECT EXAMINATION

BY MR. CHERNAU:

Q. State your name and your place of business for the record, please.

A. Charles Thomas Hardy, President, Forklift Systems, Incorporated.

Q. Now, you are involved in more than one business?

A. Yes, sir.

Q. And I want to make it crystal clear for the record. One business is Forklift Systems, Inc.?

A. That is correct.

Q. All right. That's a Tennessee corporation?

A. Yes, sir.

Q. That's engaged in the business of?

A. Selling and servicing, leasing - parts and service and sales of lift trucks basically and related items.

Q. All right. Let's put that right over here. Now, in Tennessee under another corporation you are engaged in the business of leasing?

[p. 112] **A.** That is correct.

Q. That's leasing forklifts?

A. That is correct. Leasing, renting, anything that's related to that.

Q. And the name of that corporation is what?

A. Forklift Systems Leasing Corporation, Incorporated.

Q. Now I am going to take that and put that over here.

Now, you are also engaged in a business in the State of Kentucky; is that correct?

A. That is correct.

Q. In a Kentucky corporation?

A. That is correct.

Q. What is the name of that?

A. Forklift Systems of Kentucky, Incorporated.

Q. That corporation is not a defendant in this case?

A. No.

Q. The reason I am trying to get this clear is financial statements have been reviewed and numbers reviewed, and I want to ask you are these financial statements what's called consolidated statements of all three companies?

A. No, they are broken out. I have got Forklift [p. 113] Systems Leasing Corp. and then I have got Forklift Systems, Inc.

Q. What about Kentucky?

A. They are not in there.

Q. Kentucky is not in there?

A. No, sir.

Q. There are no numbers in there?

A. No, sir.

Q. Now, did Teresa Harris, was she compensated on any sort of things that went on, business transactions that went on with the Kentucky corporation?

A. No, sir, she wasn't.

Q. Just this?

A. Just the Tennessee operation.

Q. Okay. And we have entered by stipulation and you have in front of you some information regarding compensation of the various employees; right?

A. Right.

Q. Now, you understand what this lawsuit is about?

A. Right.

Q. You understand what they are saying about her compensation not being the same?

A. That's correct.

Q. You have helped me with all these numbers and heard me examine her; is that correct?

[p. 114] A. Yes, sir.

Q. Now, I want you to take a moment and explain to the Court - and I don't know if you need to go to the board or not - exactly what Teresa Harris's position was compensation-wise compared to the other employees. Now I want to -

MR. CHERNAU: May I approach the witness?

THE COURT: Yes.

Q. This is going to be very helpful so I want you to do it very clearly.

A. Talking about the sheet here?

Q. Yes, that we entered by stipulation. Now, on that stipulation there is a heading says Bonus. Now, did you under subpoena bring checks evidencing the bonuses so these spaces could be filled in?

A. Yes, I did.

Q. All right, where are they? Just go slowly and don't throw the papers everywhere.

A. I have got copies of the checks and the check register from various years.

Q. Now, it says in the stipulation that for the extent that there are no figures included within a particular category the parties have not been able to stipulate to that category. Now, that category if the Court is looking at the stipulation - those are the [p. 115] checks. Turn to this. As bonuses?

A. Yeah, this is the bonus checks and check register for each.

Q. First I want to ask you a broad question. I don't want to get too tedious. I want you to explain to the Court exactly what the picture is there, all right?

A. All right.

Q. Is it true that Teresa Harris was being paid, was receiving more money than most of the other employees?

A. Yes, that is true.

Q. Who were males?

A. That is true.

Q. I guess females too?

A. Yes.

Q. What was her position?

A. She was rental manager.

Q. Was she rental manager the whole time she was there?

A. Yes, she was.

Q. Okay. Now, if you would - and remember, now, I want you to explain this so that Mr. Venick can understand it and so the the [sic] Court can understand it. By looking at that stipulation explain what those figures reflect and what's the significance of them in regard to, in regard to the total amount of compensation Mrs. Harris [p. 116] was receiving as compared to other employees. And you may use the bonus checks also.

A. Again I am not sure I have that sheet in front of me. I have got the bonus checks.

Q. This is the stipulation.

A. All right, the bonuses, let me just go through those.

MR. VENICK: Your Honor, I don't have a copy of those documents.

THE COURT: Well, he is starting with the stipulation.

MR. VENICK: The bonus checks.

THE WITNESS: Well, you subpoenaed these. I have the copies.

MR. VENICK: I didn't call you as a witness.

MR. CHERNAU: He got them because they were subpoenaed and we were going to use them right now. May I proceed?

THE COURT: You don't have copies?

MR. VENICK: No, sir.

THE COURT: He doesn't have copies.

THE WITNESS: He can have copies of that. There is the checks. I will just keep the sheets.

MR. CHERNAU: They reflect what's on the checks?

[p. 117] THE WITNESS: Right. Wait a minute, these are '89.

MR. CHERNAU: This is what I should give him?

THE WITNESS: Right.

MR. CHERNAU: Here you go.

BY MR. CHERNAU:

Q. All right, starting again now - and again I don't want to get too tedious, but let's explain why it is based upon the stipulation and the bonus checks that Teresa Harris was being paid as much or more than most of the other employees?

A. Okay. I am going to deal with 1987 only? That was the year that she filed the complaint, or from -

Q. Well, -

A. Let me do 1987.

Q. All right, do 1987 first.

A. 1987, Your Honor, the Comptroller who was a male income was 2470 dollars a month. He received no bonus.

1987 Kathy Kernell, who was the office manager at the time, her salary was 1300 dollars a month and she received a bonus of 4,500 dollars.

Q. That's your daughter; right?

A. That is my daughter, that is correct. The service manager in 1987 had an income of [p. 118] 2,520 dollars a month. He got a bonus of \$4,500, and he was a male.

Kathy was a female. First one was a male.

The parts manager was David Matthews. He had an income of in '87 of 2100 dollars a month. His bonus was 1800 dollars, and he was a male.

Dick Reed, who was the sales manager, had a salary of \$3,000 a month and no bonus, and he was a male.

The rental manager up through October first of that year was Teresa Harris. She got a bonus check of 3,000 dollars and her income, according to her W-2 form, was 2,605 dollars and 93 cents a month, which would make her make more than all but Dick Reed, the sales manager, in salary, base salary and income.

Q. Is that 1987?

A. That's 1987.

Q. All right, she has alleged that she was paid upon a different basis from the other managers. That's what she alleges in the EEOC.

A. The only difference was she was the only one - she was the first one to go on salary plus commission.

Q. So she was paid on a more favorable basis as far as making more money?

A. Yes, that's correct.

[p. 119] Q. So when she says paid upon a different basis, that's true. The thing she didn't say it was on a more favorable basis; is that accurate?

A. That's true.

Q. Now, '87 is the year that she is complaining about; is that correct?

A. Yes, sir.

Q. Now, you have the numbers for '86?

A. Yes, sir.

Q. You have those numbers also and you were asked to bring checks and all that and you brought them?

A. Yeah, I did that, right.

Q. Okay. During her employment there, was she treated differently by way of compensation than any other manager?

A. Only difference would be is that she was the only one on commission. She had an opportunity to increase her pay, and the other ones didn't.

Q. Now, they also have been saying things -

THE COURT: She was the only manager on base salary plus commission?

THE WITNESS: That is correct.

THE COURT: Smaller base salary but opportunity for commissions?

THE WITNESS: That's correct, yes, sir.

[p. 120] BY MR. CHERNAU:

Q. And the end result was how did she compare to these other people?

A. She made a lot more than most of them.

Q. Who made more than she did?

A. It was pretty close, but Dick Reed was making a little bit more than she was. She was making more than the comptroller and parts manager.

THE COURT: And he was just on base salary?

THE WITNESS: Yes. Everybody else was on base salary.

THE COURT: Except Mike Moseley?

THE WITNESS: No, Moseley was not on at the particular time 1987.

THE COURT: In '88 he went on base salary plus commission?

THE WITNESS: That's right.

BY MR. CHERNAU:

Q. After she left. But even now I don't think he is making as much as she made?

A. No, he is not.

Q. Even now after she's gone he's not?

A. No.

Q. Explain to the Court what the ideas of automobiles to various employees. Just do it in your own [p. 121] words and do it quickly and succinctly.

A. Basically the only people that are furnished automobiles are the people that are required to drive a tremendous amount of miles per year. Economically after a person drives 10, 12, 14 thousand miles a year, it is more economic to furnish a vehicle than to give mileage. Everybody was on 18 cents a mile with exception of Mike Moseley had a pick-up truck and was on 24-hour call as a service manager.

Q. Wait just a minute. Mike Moseley was on 24-hour call as what?

A. Service manager.

Q. So he had to have a truck; is that right?

A. Right. He was furnished a pick-up truck and he had to come in on weekends and everything else.

Dick Reed was furnished an automobile because he was responsible for sales in two states which would require a lot of mileage.

Q. That's the man who just testified?

A. Right, that's correct.

The only other person furnished a car was in 1987 after we opened the Louisville branch. We furnished Kathy Kernell a car because she was going to Kentucky and closing out the books each month. So it required her to travel to and from Kentucky. Everyone else got 18 cents a [p. 122] mile. The hundred dollars from Bennie Lawson and fifty dollars for Kathy Kernell was when they were on different jobs and they were going to things like have to go get tags at Metro, post office, daily runs to the bank, to the printer's and those type things. So instead of them trying to keep track of their mileage all the time, we just gave them a [truck fee sic] flat fee.

Q. Does that cover automobiles, trucks and who had them?

A. Yes.

Q. Okay. Let's talk a minute about reviews. First of all describe to the Court what means are used by you in making a judgment on someone's performance. I am trying to get around to the review aspect.

A. Well, basically it is reviews are pretty informal at Forklift Systems. They are not something where we have flow charts and diagrams and analysis and all that. It is a casual conversation discussing how they perform their duties.

THE COURT: And you conduct the conversation?

THE WITNESS: Normally, yes. If they answer directly to me, which Ms. Lynch did.

Q. Mrs. Harris?

A. She was always Ms. Lynch when she worked for me. Mrs. Harris.

[p. 123] Basically the criteria is how well they follow directions, how well they communicate with the rest of the staff and how well they conduct intermingle their department with the other departments and how well they operate with the other managers and get along with basic people in general and whether or not they operate their department in a professional and profitable manner. And those were basically the three criteria that we used.

Q. You heard me, and of course you and I read this tape, the transcript of the tape. She said that you didn't give her review and you said you did give her review?

A. That's correct.

Q. Could the difference of opinion be in what she felt a review should be?

A. I certainly feel that's what it was, and I told her that several times.

Q. What did you tell her?

A. I told her I just felt like that she got a review and I told her the dates that we went over, and she didn't agree with that. So I didn't want to sit and argue so I said whatever, but I think it is a misinterpretation what she felt like was a review and what wasn't.

Q. What had it been like prior to that?

A. It's been the same way for 13 or 14 years so it hasn't changed.

[p. 124] Q. Do you still do it the same way, a casual conversation you discuss it?

A. Right.

Q. During the meeting, that two-and-a-half-hour meeting that this transcript came from, did you try to explain to her about her job and what she had to look forward to and how the business was working on rental stuff?

A. I'm sorry, I missed you there, Stan.

Q. Did you during that two-and-a-half-hour meeting discuss with her about what was going on with rentals - I mean, she was the rental manager - and what had to be done to make money and whether her load was too heavy, et cetera, discuss general business?

A. Are you talking about when she taped the conversation?

Q. Yes.

A. Yes.

Q. And the transcript reflects that. I mean, I didn't go over everything in it, but it reflected that?

A. Yes.

Q. How did you find out, by the way, that she had taped the conversation?

A. She called an employee of our company and was boasting about it, and he came and told me.

[p. 125] Q. Is there anything else to tell the Court in regard to this review business?

A. Not that I can recall. The only point I wanted to make was the fact that any time you bring an employee in and you start discussing compensation, I mean that is a form of review. Whether or not she interpreted it to be that -

Q. Well, obviously she did not.

A. Right. But, I mean, we didn't talk about their income, her income in particular on a daily basis. It was discussed - I can't remember exactly. Have to look it up - in May or June, whenever it was. We do that every year about the same time. It is not always - for instance, this year we didn't get to do it until early July. So I mean it is not etched in concrete. That's when we try to do it and when the employees are notified to look forward to review during those months.

Q. I believe in the tape you made a point to her that you treat everyone the same?

A. Treat everybody equally.

Q. Was the workplace a place where a lot of joking went on?

A. We tried to keep it light mannered, enjoyable place to work.

Q. And I think that's reflected in the transcript [p. 126] too. Now, did you feel when you were making jokes as these two witnesses said they received that they put on, was it your intention to make Teresa Harris uncomfortable?

A. No, not at all.

Q. Was Teresa Harris a friend of yours?

A. A very close friend of mine.

Q. And did you and your wife go out with Teresa Harris and her husband?

A. Yes, we have socialized I think she mentioned one occasion. I can't give you the number.

Q. And you liked Teresa Harris?

A. Thought - I had a very high opinion of Ms. Lynch.

Q. On these things that you have heard about about [sic] throwing coins down or the joke about corn making breasts grow and things about get a quarter out of my pocket, these things were recognized - I will ask you the question. Were these things recognized generally in the office as jokes?

A. First of all, I was asked those questions when all this came up and I didn't remember them because it was a joke and everybody was - we had a pretty loose group that liked to joke around. I don't mean that in a derogatory manner when I say loose. Everybody liked to have fun. We worked hard, we played hard, and everything [p. 127] was construed as a joke. It was never intended nor was it ever indicated to me it was taken any other way.

Q. You heard her explain about the corn business?

A. Yes.

Q. With Terri Curtis. That was Terri Curtis that did that?

A. Yes.

Q. And you heard me ask her about J. R. Greg about this quarter business?

A. Yes.

Q. Is Greg the one that -- was he the one that had the episode happen to him?

A. With a guy named Jansen Meredith.

Q. Who had said something to him about getting a quarter out of his pocket?

A. Yes.

Q. And that was nothing in the office?

A. No.

Q. That man wasn't employed after you heard him making the jokes, I assume?

A. No.

Q. And you heard her say that you had management meetings at the Holiday Inn many times?

A. Yes, we did.

Q. And on the tape I think you covered that on the [p. 128] transcript with her too.

Now let me ask you this. You helped Larry Harris, Teresa Harris's husband, start a business called Cellular Power?

A. That's correct.

Q. You provided the financial wherewithal?

A. One hundred percent.

Q. And had Larry Harris taken [the sic] option of take[ing sic] it over and run[ing sic] it?

A. We had the option where Teresa Harris could earn it over a five-year period going in had that understanding.

Q. They could earn their own business, you get whatever it is back and they would grow?

A. Right.

Q. Growing out of that transaction there was a note owed to you, wasn't there?

A. That is correct.

Q. Did in fact Larry Harris and his company, Cellular Power, make payments to you each and every month that it was due?

A. That is correct.

Q. And did they make those payments each and every month that they were due for a long period of time?

A. Through September of '87.

[p. 129] Q. And it was in September of '87 that all of this happened with Teresa Harris and Forklift Systems?

A. That's correct.

Q. And when Teresa Harris and Forklift Systems happened, did the payments on the note stop?

A. Immediately.

Q. Okay. And you had to institute suit for the collection?

A. That is correct.

Q. And you now have your money?

A. Yes, sir, I do.

Q. All right. Did the problem with Teresa Harris at Forklift Systems as you understand it mirror the same time that you started having difficulty with Mr. Harris running Cellular Power?

A. I believe it did, yes, sir.

Q. And it was that you didn't think that Larry Harris was running the business the way it should be run?

A. That is correct.

Q. You had your money in it?

A. Yes, sir.

Q. And you have gave [had given sic] him some alternatives; is that correct?

A. Yes, sir.

Q. And did you also because of those things [p. 130] happening business-wise with Cellular cause Forklift Systems to discontinue having business with them?

A. I told Larry in September that we would not continue doing business with them.

Q. You told Larry Harris that?

A. Yes, I did.

Q. Did you have any conversation with Teresa Harris about that?

A. I am sure I did. I can't swear that I did, but I am sure I did.

Q. When do you think Teresa Harris found out about Forklift Systems stopping doing business with her husband's company?

A. Well, it was all so closely related because - excuse me just a minute, Your Honor. Let's see. September something.

Q. Well, just approximately.

A. Well, I was just going to give you the chronological order here. On September 29, which was a Tuesday, had a meeting with Larry Harris at 3:00 p.m. and notified him because of our differences we would be terminating our business, and then on October first she left, which was Thursday.

Q. So would it be safe to say that within a very, very short timeframe all of these things happened at once?

[p. 131] A. Yes, I think that would be correct.

Q. What was your reaction when you discovered from a fellow employee that your conversation had been taped?

A. I was just astonished that she would do that.

Q. Why were you so astonished?

A. We had been very close the whole time Teresa had been there we had a very close relationship. We had -

I mean we were just very, very good friends and we were close, and I just didn't think that she would do something in my opinion under-handed like that. I was just astonished that she would do it.

Q. Was it a fact that Teresa Harris - and she said she did, but was she treated like one of the boys by the rest of the fellows?

A. Yeah, she always was. That's what she always wanted to be.

Q. In fact she took a trip once to Memphis in a van with just men?

A. That's correct.

Q. Up until all of this stuff came to your attention with her telling you all these things, did you know that she wasn't happy being one of the boys?

A. No, she never told me that.

Q. Did you know that she may not have been happy making the money that she was making?

A. I think she was happy with the money she was making. Didn't indicate to me she wasn't.

Q. What is the review thing talking about money?

A. Well, the review thing basically we review once a year and I just wanted to let her know and went something of the nature of the plan is going to be the same next year. Went through this with Dick Reed. There will be no increases in salary. There will be no increases in the compensation plan in any form unless we some time this

year - and I told her that Bennie and I would sit down and look at the numbers.

Q. Bennie Lawson?

A. Bennie Lawson. And we'd look at the numbers and that we were obviously probably going to have to change the commission plan from the standpoint of the company incurred some 250-300,000 dollars worth of additional indebtedness from forklifts, and yet she was still being paid under the old plan.

Q. That is also in the transcript, is it not?

A. I believe it is, yes, sir.

MR. CHERNAU: You can ask.

CROSS EXAMINATION

BY MR. VENICK:

Q. Mr. Hardy, as I understand your testimony, you testified on direct that you conducted a review of Mrs. [p. 133] Harris on June first of 1987; is that right?

A. Approximately that time, yes, sir.

Q. Well, in fact didn't you have a notation in her personnel file dated June first, '87?

A. I have got her personnel file over there. I am sure I did.

Q. Let me hand you this document.

A. Okay, is that a copy of the note that you placed in Mrs. Harris's personnel file reflecting her review on June first, '87?

A. I am sure it is, yes, sir. It is my handwriting.

MR. VENICK: Move that into evidence, Your Honor, as the next exhibit.

THE COURT: Without objection, part of the record.

(June 1, 1987, review was marked Exhibit 5.)

Q. And that document was written on June first, '87, wasn't it?

A. Yes, sir.

Q. Now, that document basically doesn't contain any complaints about Mrs. Harris's job performance except having to make too many - that she made too many personal phone calls and had to improve her billing time; is that right?

[p. 134] A. That's correct.

Q. That's the only thing you state in there about her job performance?

A. Right.

Q. And I believe your testimony in your deposition was that in fact you had made notations in your personal desk calendar about the reviews of all the managers in 1987; is that right?

A. I normally make a notation as to when we do it, yes.

Q. And in your desk calendar you also had made a notation on Tuesday, August 18, 1987, about a reprimand you had given to Mrs. Harris; isn't that right?

A. Yes.

Q. Let me hand you these documents, Mr. Hardy, and ask you if in fact those are not copies of documents of those pages from your calendar?

A. I feel certain they are, yes.

THE COURT: He says yes.

MR. VENICK: And if we can move that as the next exhibit, Your Honor.

THE COURT: Without objection.

(Calendar pages were marked Exhibit 6.)

Q. Now, with respect to Exhibit Number 6, Mr. Hardy, just out of curiosity you had a notation down here [p. 135] that on May 25 you reviewed Mike Moseley and David Matthews; is that right?

A. Let me look. That's correct.

Q. Were you open on Memorial Day that year?

A. Pardon me?

Q. Were you open on Memorial Day that year?

A. I don't know.

Q. Well, the calendar says "Memorial Day observed", doesn't it?

A. It just got on the wrong page, I'm sure.

Q. Well, I mean didn't you write these down on the day these things occurred?

A. May or may not have.

Q. Oh, so these things may not be accurate? Is that what you are saying?

A. I didn't say that they were accurate or were not accurate. You asked did I write them down on that particular day. I may or may not have.

Q. Did the review occur on May 25?

A. I made a notation probably on something else and put it in there. It is not unusual to do that.

Q. My question was did the review occur on May 25?

A. If that's Memorial Day it did not, no, sir. We are closed Memorial Day.

Q. What about the next one, Dick Reed, May 26, [p. 136] [did sic] the review occur on that [day sic]?

A. I am sure they all occurred that week. What I did, I just took Monday when I went back. You can look at the writing and you can see they were all made on the same day.

Q. When you went back, Mr. Hardy? What do you mean when you went back?

A. Well, when I went back and made the notation.

Q. Don't you schedule things in advance and write them in advance rather than going back?

A. Not necessarily.

Q. You go back and take care of it that way, Mr. Hardy?

A. I keep note pads and things if I didn't have something on me. I might not have had this with me when that was done.

Q. You keep that on your desk every day, don't you?

A. No, sir. Sometimes it is in my car, and I have got more than one car. Could have been in my car.

Q. Let me see if I understand your testimony about those notations on that desk calendar. Are you saying then that those were more than likely not made on the days indicated?

A. Obviously if it was Memorial Day probably what [p. 137] happened was you can see May 25, 26 and 27 what I probably did was did reviews, made my notes and at some later date went back and put them in.

Q. You didn't answer my question.

A. I'm sorry, I didn't understand.

Q. I thought it was pretty clear, Mr. Hardy. I asked if you made the notations on the calendar on the date indicated.

A. No, sir.

Q. You made them some other time?

A. Yes, sir.

Q. Would you have made them all at the same time?

A. I would assume, yeah. It looks as if they were made by the same pen. I would say yes.

Q. In addition there is also included in Exhibit Number 6 an entry for date of August 18, 1987; is that right?

A. Yes, sir, I have got that.

Q. And below that is a reference to a conversation that you allegedly had with Mrs. Harris that day?

A. That's correct.

Q. Now, starting with the words "meeting with Teresa Lynch 3:00 p.m."?

A. Right.

Q. Was that note written on August 18, '87?

[p. 138] A. Somewhere thereabouts I am sure, yes. That one there the meeting with Teresa Lynch at 3:00 p.m. I am sure was written before August 18 because I probably had that set up. You can see that the ink is different. And then I went back and entered in what we had talked about.

Q. So the part that says "receptionist quit", that was probably written August 18?

A. Could have been August 18 or 19. I didn't necessarily always put it in the same day.

Q. So that day or the next day?

A. Right. I would think so.

Q. And in the personnel file for Mrs. Harris you also made another notation of that conversation with Mrs. Harris on August 18, did you not?

A. Is that the one you gave me earlier?

Q. No, it is the one I am giving you right now. Okay, is that from Mrs. Harris's personnel file?

A. Yes, it is.

Q. And that basically mirrors the entry in your calendar on August 18, '87; is that right?

A. Pretty close.

Q. Was this document written on August 18, '87?

A. I would say close to it, yes, sir.

Q. Well, Mr. Hardy, in your deposition I had asked [p. 139] you whether or not you ever pre-dated or post dated any documents that were in personnel files and you said no.

A. Well, I don't. I mean, I might go back and put something in the personnel file. That might not have went in until the next month.

Q. You are saying this may have gone in sometime a month after it occurred?

A. May have.

Q. No more than that?

A. I can't tell you that. We are talking three years ago. I am telling you what my practice is: is [sic] that I will make notations on whatever I have got available at the time. I don't carry this thing with me all the time. It is not always on my desk.

Q. When I had asked you whether or not you pre-dated or post dated memorandum, you said no.

A. No, I do not.

Q. You don't consider writing this a month later and putting in dating August 18 as post dating a memorandum?

A. I don't know that I did, but I can't say that. You are asking me to emphatically tell you if that was written on August 18. It is dated August 18. If you want me to say that I wrote it August 18, then I will say I wrote it August 18.

[p. 140] Q. Is that your testimony?

A. I cannot swear to that, no, sir.

MR. VENICK: Like to move that into evidence as the next exhibit, Your Honor.

THE COURT: Any objection?

MR. CHERNAU: No, Your Honor

THE COURT: Part of the record.

(August 18, 1987, memo was marked Exhibit 7.)

Q. You were also asked to bring the personnel file of Kathy Kernell, and from that there is a document dated November 23, '88. Is that from Ms. Kernell's file dated that day?

A. I am sure. Yes.

MR. VENICK: Like to move that into evidence as the next exhibit, Your Honor.

THE COURT: All right. This one was number 7. Now this one is number 8.

(Kathy Kernell file document was marked Exhibit 8.)

MR. VENICK: Can I consult with you on the number of our exhibits? Thank you, Your Honor.

THE COURT: Mr. Venick, this is that statement from Vanns.

MR. VENICK: Right. That's not an exhibit, Your Honor.

[p. 141] THE COURT: You may take it back then.

MR. VENICK: Thank you.

BY MR. VENICK:

Q. Mr. Hardy, with respect to your desk calendar entry of August 18, 1987, you make a reference down there about receptionist quit?

A. Yes, sir.

Q. Now, wasn't your testimony in the deposition that we took in my office - in Mr. Chernau's office that in fact you claimed that Mrs. Harris caused two receptionists to quit because of her language?

A. Yes.

Q. And those two receptionists were Angela Hicks and Kim Hampton?

A. I believe that's correct.

Q. Just so I can be real clear now, they quit because of Mrs. Harris's language?

A. They quit because of Mrs. Harris and her language, that's correct. That's what they told me.

Q. And they quit?

A. That's what they told me.

Q. Now, I believe you also testified in your deposition that you were intending to terminate Mrs. Harris some time and that is that you had a meeting with Dick Reed in September '87 to fire Mrs. Harris. Isn't that right?

[p. 142] A. When did I testify to that?

Q. Well, you testified to that on Tuesday, November 21, 1989, page 37 of your deposition. Want me to read your testimony to you?

A. Yeah, would you? That is correct, but I didn't think that I testified to that.

Q. This is beginning on line 22:

"A. I had every intention of firing her.

"Q. When?

"A. Dick Reed and I had a meeting. We were going to terminate Ms. Lynch on October 7. She just kind of beat us to the punch.

"Q. When did you and Mr. Reed have a meeting?

"A. It was the end of September when we terminated the business with Larry so I would say it was around the 29th."

Q. Is that your testimony?

A. That is correct.

Q. You were going to fire Mrs. Harris pursuant to a meeting you had with Mr. Reed sometime prior to the meeting you had with Mr. - allegedly had with Mr. Harris; is that right? Do you follow me?

A. I'm -

Q. What I am trying to say is you had a meeting with Dick Reed where you had decided you were going to terminate Mrs. Harris, and that was before the meeting you testified on your direct examination that you had with Mr. Harris and told him you were terminating the business relationship?

[p. 143] A. We had the meeting with Larry on the 29th of September. Now, what are you asking?

Q. And this meeting with Mr. Reed to fire Mrs. Harris occurred prior to that?

A. No. Well, it could have been, but I'd say it was probably after that. I mean, I don't really - it is three years ago. I can't remember.

Q. Deposition -

A. It would have been somewhere in that time.

Q. There is no question in your mind though that you had a meeting with Mr. Reed where you discussed firing Mrs. Harris?

A. Yes, I did.

Q. And with respect to the business relationship with Mr. Harris's Cellular Power Systems, I believe you were requested to produce documents that substantiated

some of the concerns you had about Mr. Harris's business, and there weren't any documents; isn't that right?

A. No, there were not any documents that I can recall other than just conversations between customers and salesmen and suppliers.

Q. And it is your testimony that you in fact terminated the business relationship with Cellular Power on September 29, 1987?

A. That is correct. He was personally notified by [p. 144] myself.

Q. Hand you a copy of this document. That's a copy of the letter that Stephanie Vanns wrote on October 7, 1987, to Cellular Power, is it not?

A. That's correct.

Q. And that's her signature as you recall?

A. That's not my signature.

Q. I said it's her signature?

A. Yes, as far as I know.

Q. And the date of it is October 7, '87?

A. That is correct.

Q. And the document says that pursuant to a conversation that she had with him, all existing purchase orders were going to be cancelled?

A. That is correct.

MR. VENICK: Like to move that into evidence as the next exhibit, Your Honor.

THE COURT: Without objection. That's number 10.

(October 7, 1987, letter from Vanns was marked Exhibit 10.)

Q. Now, with respect to the meeting that you and Mrs. Harris had when she kept that tape?

A. Yes.

Q. You did apologize to her for what you said to [p. 145] her. Isn't that the case?

A. I told her if I offended her for anything, I apologized because she never indicated to me that I offended her.

Q. Well, specifically on page 7 you said-

A. I need a copy.

MR. CHERNAU: May I hand this to him?

THE COURT: Yes.

MR. CHERNAU: I have written all over it so you have to watch for it.

A. Page 7?

Q. Page 7.

A. Yes, sir.

Q. You say there in the third full paragraph:

"Well, you know, let me just say this. I apologize for all the times I said the things you took wrong. Had I known that it bothered you that much, I wouldn't have said it, but I think you

would be foolish to throw out what you have got here on a whim. You got pissed off."

Is that what you said?

A. I believe that's correct, yes, sir.

Q. And is that an apology?

A. That's what it says. Says "I apologize."

Q. You take that as an apology, don't you?

A. I would assume that. I said, "I apologize."

Q. Didn't you testify in your deposition that you [p. 146] never made any apology to Mrs. Harris?

MR. CHERNAU: What page?

MR. VENICK: I am asking first if that's what he said in the deposition.

A. I don't know. Read - I don't understand what you are talking about. If I testified I didn't, I guess I testified I didn't.

MR. VENICK: Your Honor, can we take a brief recess so Mrs. Harris can go to the restroom?

THE COURT: Yes. Ten minutes.

(A short recess was taken.)

THE COURT: You may go ahead.

BY MR. VENICK:

Q. Mr. Hardy, before we broke actually I was asking you whether or not you had in fact apologized for the things that Mrs. Harris had took offense to, and I think

your testimony was you had apologized and that's what your testimony was in your deposition?

A. That I did apologize.

Q. That you did?

A. Yeah, that's fine.

Q. My real question though after you apologized you then promised her you wouldn't do it any more?

A. Go on.

Q. My question to you is after you told her that [p. 147] you apologized for whatever it was she took offense to, did you promise to her you wouldn't do it any more?

A. I think that's correct, yes.

Q. Well, now, at your deposition on Tuesday, November 21, '89, I asked you that exact question, Mr. Hardy. I asked you this.

MR. CHERNAU: What page?

MR. VENICK: Ninety and 91.

Q. Did you say to her, you know, Q. "whatever it is you are complaining about, I promise to stop it"?

"A. No, sir."

Well, did you promise to stop it or not promise to stop it, Mr. Hardy?

A. It is obvious right here that I said I apologize for all the things I said you took the wrong way.

Q. Were you telling the truth in Mr. Chernau's office or telling the truth today about promising not to do it?

A. I always tell the truth.

Q. You were sworn under oath, weren't you, Mr. Hardy?

A. I could have misunderstood your testimony. I apologize.

Q. So in fact you did promise you wouldn't do it any more?

[p. 148] A. Yes, sir, it is pretty obvious from this that I did.

Q. Now let me go back a little bit so I am clear on what happened with Cellular Power Systems and Forklift Systems. Now, as I understand your testimony you had some problems with what Cellular Power Systems was doing, how they were providing service to you; is that right?

A. Yes. This - right. What year was this is what I am asking.

Q. I think you testified that you terminated the business relationship September 29, '87?

A. Right, that's correct.

Q. So prior to that time I assume you must have had some reasons for terminating the business relationship?

A. That's correct. We actually discovered it late - well, probably early '87 when we discovered the discrepancy.

Q. Discovered what?

A. That we were being price gouged.

Q. Oh, price gouged. You discovered that in early 1987?

A. I'd say the spring of '87 is when we first confronted Larry.

Q. Why else did you terminate the business relationship besides the price gouging you discovered in [p. 149] the spring of 1987?

A. Poor service.

Q. Poor service?

A. Poor response time. Complaints from customers. Complaints from salesmen.

Q. And you discussed these complaints in meetings with your managers, did you not?

A. No, I discussed them with Larry Harris.

Q. You never discussed them with your managers?

A. Oh, I am sure there were some discussions, yes. I can't give you a specific date that we did, no.

Q. Well, you had managers meetings, didn't you?

A. That wasn't discussed at managers meetings.

Q. You never discussed it at managers meetings?

A. I can't tell you. As far as I know, I don't think something like that would be discussed. If we were having trouble with a particular supplier, unless a manager brings it up or something, it is not discussed.

Q. So you had problems with price gouging that you discovered in spring of '87?

A. You are asking me for specifics. We had so many reasons. That's just a few I remember.

Q. In your deposition you named four.

A. That was four I remembered.

Q. They were price gouging. They were poor [p. 150] service. They were something about him hiring some former employee of Forklift Systems?

A. That's correct.

Q. And some questionable billing?

A. That is correct.

Q. Those are the four reasons?

A. Yes, sir.

Q. You have been involved in a lot of litigation with Cellular Power so I would imagine by this time this stuff would be at the tip of your tongue, Mr. Hardy.

A. Well, I appreciate your having so much confidence in me, Mr. Venick.

Q. I don't have a whole lot of confidence in you Mr. Hardy.

MR. CHERNAU: I don't think that's appropriate.

THE COURT: Let's don't have any jousting. Feudal days are over.

MR. VENICK: Yes, Your Honor.

Q. So you are saying you didn't talk about the problems with Cellular Power in your manager meeting?

A. Mr. Venick, I am not saying that we didn't, no, sir. I can't tell you that we did. I just don't ever remember having a conversation about it in a managers meeting.

Q. Your best recollection is you didn't have a [p. 151] managers meeting?

A. That is correct. Whatever department we were having the trouble with, that's who we would have talked to about it.

Q. But you would have talked to certain other managers in your employ?

A. I am sure, yes.

Q. Would have talked to Dick Reed about it?

A. Dick Reed, Mike Moseley.

Q. Bennie Lawson?

A. Just whatever - no. Well, we might have talked to Bennie about it, right. Could have.

Q. Teresa Harris?

A. We might have talked to Teresa about it. I am not sure. We talked to Larry.

Q. I am talking about you.

A. I can't swear that I did or didn't. I mean, I just - I just don't know. I don't recall the conversation about that.

Q. But your testimony is that you did speak in addition to certain employees of Forklift Systems you talked to Larry Harris about these problems?

A. I sure did.

Q. And particularly what problems did you talk to him about?

[p. 152] A. Well, the pricing.

Q. When did you talk to him about the pricing?

A. Some time prior to October of '87.

Q. No idea when that might have been?

A. No, sir.

Q. What else?

A. I mean just the general things that we told you we were having problems with. Just all the various problems were getting we are paying the price of a new battery and getting an old battery. I mean, the way we discovered it was when we opened the branch in Louisville, Kentucky, in late '86, '87 we started selling a few products up there. We discovered that they were buying the same batteries at five percent cheaper than we were buying batteries, and of course his comment was, "Well, they are larger and they are buying larger quantities." And he always had some excuse, but everything kept going the same and we kept complaining until we terminated everything.

Q. Did you tell Mr. Harris that this stuff was bothering you so much that you might have to terminate the business relationship?

A. I don't know that I told him it was bothering me that much. We told him if it continued we would terminate it, yes, sir.

Q. You told him that on a number of occasions [p. 153] prior to September 29, 1987.

A. More than once. I don't know how many occasions.

Q. That's the basis of your allegation Mrs. Harris should have known about that; is that correct?

A. I would assume she would.

Q. Well, it is the basis of your allegation because you already testified that you probably didn't talk to her about it?

A. Well, I didn't say that I - I can't recall. You asked me did I talk to her. I cannot recall a conversation I had with her. I'm sorry.

Q. So, fine, your best recollection is you didn't talk to her about it?

A. That's correct.

Q. So the only other person she could have heard about it from was Larry Harris?

A. That would be -

Q. So your testimony is that you told Larry Harris -

THE COURT: That's not necessarily so. Larry could have told somebody else who told his wife. Go ahead.

Q. But it would have gone through Larry Harris?

MR. CHERNAU: Well, it could have gone through another employee of Forklift. I wasn't going to interrupt [p. 154] this, but this is sort of silly.

THE COURT: Watch the questions, Mr. Hardy. Listen to the questions carefully.

BY MR. VENICK:

Q. Now, do you recall the deposition that Mr. Wilson took in the case of Hardy versus Harris on June 15, 1988? He took your deposition in that case, didn't he?

Yes, I remember that.

Q. According to the deposition it was June 15, '88. During that deposition Mr. Wilson asked you whether or not you had regular meetings to evaluate the quality of service and the products that was being received by, for example, Cellular Power. You said, "Yes we, do." You just testified a few minutes ago you didn't.

A. No, I didn't. You asked me did we do that in managers meetings. That's not what that says.

Q. So what did you take that question to mean, Mr. Hardy?

A. Read it again. It is self explanatory.

Q. "And do you have regular meetings, for example, to evaluate the quality of the service and products that is being received by, for example, Cellular Power Systems and its predecessor?"

A. And I said yes.

Q. And you said, "Yes, we do."

A. Yes. But that could be a meeting with a [p. 155] particular manager. Wouldn't necessarily be at a managers meeting.

Q. I see. Okay. And you also testified earlier that you cancelled the orders and terminated the business relationship with Mr. Harris in person; is that right?

A. That is correct. He was sitting right across from my desk.

Q. Let me refer you back to the deposition you took. This is the series of questions and answers that were given.

MR. CHERNAU: Which case are we in?

MR. VENICK: This is Hardy versus Harris.

Q. "Q. Can you tell us on what factual basis orders were cancelled with Cellular Power Systems after Teresa Harris left the employ of Forklift Systems?"

"A. They were cancelled prior to her leaving.

"Q. Are you saying then that there were none ever cancelled after her leaving?"

"A. No.

"Q. You are not saying that?"

"A. I am saying we cancelled over the phone. Now, he may have received written confirmation after she left, but they were cancelled prior to her leaving."

A. That's correct. The way the thing actually happened was Larry Harris and I had a meeting and I told

him that I was going to cancel it. And part of it involved Carl Myers who had stolen money from us. I told him if he hired Carl Myers, we couldn't tolerate doing any more business with him based on everything else, all the other [p. 156] problems we had.

He went ahead and hired Carl Myers, and I called him on the phone and told him we were going ahead with our plans. And that's when we set up the meetings with the battery people and precipitated Teresa leaving.

Q. You testified earlier about the basis upon which you evaluate employees?

A. Uh-huh.

Q. Remember that testimony?

A. Yes.

Q. One of the things you talked about was basing your evaluation on profitability; isn't that right?

A. That's correct. That's a big thing.

Q. In the course of discovery in this case you had prepared this document, did you not?

A. I believe that's correct.

Q. That's your handwriting, isn't it?

A. Yes. But you have already told me this is not correct in a meeting at Stan's office.

Q. I am asking if that's your handwriting.

A. Yes, it is my handwriting.

Q. And in the course of that document you make some references to raises that were given and point out at the bottom that the rental department showed a loss?

A. No, I didn't say it showed a loss, no.

[p. 157] Q. Or it had reduced profits; is that correct?

A. That's correct.

MR. VENICK: Let's move this into evidence as the next exhibit, Your Honor.

THE COURT: Without objection. Part of the record.

(Handwritten chart was marked Exhibit 12.)

Q. And what you show on this document is that the parts manager received a five percent increase in salary at the very top; isn't that right?

A. Yes.

Q. And you show based upon the '87 and '86 figures an increase in net profit or actually it's gross profit of approximately 14,000 dollars; is that right?

A. Yes.

Q. And service manager received five percent increase; isn't that right?

A. That's correct.

Q. And your figures from '86 to '87 show an increase in profit of approximately 44,000 dollars?

A. Right.

Q. And then you have the figure for the rental manager?

A. Right.

Q. Now, these figures, if I am not mistaken, are [p. 158] based upon Forklift Leasing; isn't that right?

A. Probably, yes. Yeah, I think that's correct.

Q. And at the very top you have, "Evaluation in question May '87 covers performance from 3-1-86 through 2-21-87"; is that right?

A. Wait a minute. That was what -- all that refers to is that was what you were asking for. That doesn't mean this is what I used for exact evaluation.

Q. This was part of evaluation, wasn't it?

A. This was part of it.

Q. Because you show some increase here?

A. I don't want you to misinterpret that. This was done for your benefit.

Q. I appreciate that, Mr. Hardy.

A. You are welcome.

Q. Now, the rental manager's cost and sales are reflected in the profit and loss statement, financial statements of Forklift Leasing Corporation; isn't that correct?

A. That's correct.

Q. There is also a revenue and cost included in profit and loss statements and financial statements of Forklift Systems; isn't that right?

A. That is correct.

Q. And these figures at the bottom don't include [p. 159] the Forklift Systems figures, do they?

A. No, they do not.

MR. VENICK: Your Honor, at this point I want to -- I have asked Mr. Hardy to bring the financial statements of Forklift Leasing and Forklift Systems. I have made a chart of those. Those are under a protective order. I'm happy to deal with them any way the Court wants to deal with them.

THE COURT: Just go forward with your proofs. I think a protective order doesn't cover matters in court. But I think it also states that people can't take anything out of court.

MR. VENICK: Yes, Your Honor.

Q. Now, Mr. Hardy, I have taken the benefit of going through the financial statements you were ordered to bring to court this morning for Forklift Systems and Forklift Leasing?

A. Okay.

Q. I believe in your deposition you said what you looked at was gross profit, and that's what these figures show?

A. Correct.

Q. And we have a column here for 1985 and 1986 and 1987?

A. Uh-huh.

[p. 160] Q. And you can go check your documents there and make sure they are accurate.

A. No, I will take your word for it.

Q. Here we have parts sales, parts profit. We show 1987 gross profit for parts went up ten percent?

A. Okay.

Q. We have service went up seventeen percent?

A. Uh-huh.

Q. Now, we have rental from Systems?

A. Uh-huh.

Q. Went down from one ninety-nine to one seventy-nine. And that's what you had written on here.

A. I thought you had you said that was from -

Q. I'm sorry, this should be for Leasing. I got it wrong. I'm sorry. Should be for Leasing.

A. Is it reverse now?

Q. It is reverse. I'm sorry. Now for Systems we come up with this figure over here.

A. Uh-huh.

Q. You add those up, gross profit for rental attributable to Teresa Harris went up 40 percent from 1986 to 1987.

A. No, that's not true.

Q. Well, Mr. Hardy, those are the figures from your financial statements.

[p. 161] A. That's correct. I agree with that.

Q. In addition we show that net profit before taxes, okay, went from -

A. Is this combined or

Q. No, no, this is for Systems.

A. Okay.

Q. Went down from 101.4 to eighty-eight five twenty-eight, and net after taxes went up. Yet Mrs. Harris wasn't entitled to a bonus of 3,000 dollars whereas Ms. Kernell, Mr. Lawson, Mr. Moseley all got bonuses of 4,000 dollars or more?

A. That's correct.

Q. And your justification for that is her poor job performance?

A. I didn't say that. Are you saying that?

Q. No, I am asking you for your justification.

A. No. First of all, what you don't know and what these figures don't reflect is that we had about 120,000 dollars worth of rentals that went to Louisville, Kentucky. Now if you deduct that out of that, the reason I didn't use the Systems figure is she didn't get paid on the rentals that went to Louisville, Kentucky. So instead of trying to the break it all out for you - which you don't understand business; didn't expect you to - I didn't use those figures.

[p. 162] One of the big things that you made a big to-do over early on and Mr. Wilson had a large deal over was there was a note in her personnel file "do not pay

Teresa Lynch on Louisville rentals". The reason was it was done at a cost figure. That's not reflected in there.

Also she couldn't have increased her billings unless Forklift Systems bought the product. So we assumed the indebtedness.

Now, the bonus - if I may, the bonuses are a gift from Forklift Systems. Everybody in the company receives a bonus except me, and they are based on longevity in a large part.

You go back and look through, David Matthews was a male manager who had less tenure than Ms. Lynch, and he got 1800 dollars, but you don't mention that. She got \$3,000 because she had been there longer and because the company had a good profitable thing.

Ms. Lynch also and Mr. Matthews were both on a commission plan at the time and could alter their income. Mike Moseley, Kathy Kernell and Bennie Lawson had no opportunity to enhance their position one iota.

And plus they had been there ten years. I think a person that's been there ten years deserves a bonus more than a person that's been there two. And if I erred in my judgment, I erred in my judgment.

[p. 163] Q. Would you agree a person who's on commission bears more of a risk of their income than a person who's on salary?

A. I - not in her particular case no, sir.

Q. I asked you if you would not agree with that statement?

A. No, sir. Not in her particular case, and we were talking about her particular case.

Q. Mrs. Harris filed her EEOC charge October 5, 1987; isn't that right?

A. I believe that's correct.

Q. And you received that in your office some time during the month of October, did you not?

A. It was late October, yeah, 28th, 30th, something like that. I can't remember when it was.

Q. And it was your understanding that Cellular Power was - sorry, Forklift Systems was the principal customer of Cellular Power?

A. Yes, I think that would be.

Q. So you really had no expectation after you terminated the business relationship that you would get paid on your note, did you?

A. I wasn't getting paid. I mean, he had paid me September, and when we terminated it I knew see, that was what precipitated the meeting with Dick and I was that [p. 164] we knew once we terminated our relationship with Larry that Teresa wouldn't stay.

Q. Well, you also knew that Cellular Power wasn't going to be able to pay its note?

A. I didn't know that.

Q. You didn't know that?

A. No, sir.

Q. Had no idea of that?

A. No, sir. I had not seen any financial information on that company in over a year.

Q. And you filed your lawsuit against Mr. Harris in December of '87; isn't that right?

THE WITNESS: Is that when it was, Stan?

MR. CHERNAU: I don't remember.

A. I think so.

Q. Copy of the complaint prepared by your attorney then, Mr. Edwards. Date on the file document there, Mr. Hardy, at the very top -

MR. CHERNAU: This is Cellular Power filed by Mr. Edwards?

A. December 4, 1987.

MR. CHERNAU: May I see this that a moment? I don't understand what that is.

Oh, okay.

THE COURT: Part of the record.

[p. 165] (Hardy vs. Harris complaint was marked Exhibit 14.)

Q. And of course the filing of that lawsuit had nothing to do with Mrs. Harris filing that EEOC complaint, did it?

A. Nothing whatsoever.

Q. Nothing whatsoever.

MR. VENICK: One minute, Your Honor. I have nothing further, Your Honor.

MR. CHERNAU: May it please the Court, what can we do with that sheet since that's got those figures on it? I don't know what to do.

THE COURT: You can cover it back up.

MR. CHERNAU: You mean for the time being?

THE COURT: Do you want to ask any questions about it?

MR. CHERNAU: When we leave here, what should we do with it?

THE COURT: It is in the Court's possession.

MR. CHERNAU: Can he make an exhibit of that?

THE COURT: Sure he can.

MR. CHERNAU: No, did he? You may want to number it and let's fold it up. I have no questions; if the Court has any questions.

THE COURT: No, I have none. It will be taken [p. 166] down and numbered 15.

(Chart was marked Exhibit 15.)

THE COURT: Next witness.

DAVID ROY MATTHEWS was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION
BY MR. CHERNAU:

THE COURT: State your full name.

THE WITNESS: David Roy Matthews.

Q. Mr. Matthews, where are you presently employed?

A. Parts and Equipment doing business as Yale Industrial Trucks of Middle Tennessee.

Q. Were you employed at Forklift Systems during the time that Teresa Harris was employed there?

A. Partially. Teresa was there before I started.

Q. And were you there the entire time she was there?

A. No, she was there before I started and then I was there after she left.

Q. Well, that's what I meant.

A. Yes, sir.

Q. And are you a friend of Teresa Harris?

A. I believe so, yes, sir.

Q. Are you also a friend of Charles Hardy?

A. Yes, sir.

[p. 167] Q. And you have discussed this lawsuit with me?

A. Yes, sir.

Q. You have discussed this lawsuit with Mr. Venick?

A. Yes, sir. That was the gentleman that called me Thursday?

Q. Yes.

A. Okay, yes, sir.

Q. And when the EEOC complaint was filed, - oh, you didn't give a statement in the EEOC statement?

A. No, sir.

Q. Let me ask you something, David. Describe to the Court if you would the situation out there at Forklift in regard to the type of environment it was. Was there a lot of joking going on?

A. Yes, sir.

Q. And would there be statements made by people, Charles Hardy or other people, that were recognized as jokes and laughed about?

A. Oh, yes, sir.

Q. All right. Did Teresa Harris conduct herself as one of the group or as I keep using the expression one of the boys?

A. One of the group, yes, sir.

Q. And did you participate sometimes after work [p. 168] with hanging around after work and drinking beer and telling jokes?

A. I would say 98 percent of the time, yes, sir.

Q. All right. And was Mrs. Harris there many times?

A. Yes, sir.

Q. All right. Did you ever – I am going to get to the termination of her employment, but did you during the course of the time that you were there feel that Charles Hardy treated everybody equally, male or female, or that he was hostile towards females and created a hostile female environment?

A. You are asking my opinion, right?

Q. That's why you are here.

A. Charles is an intense person.

Q. All right.

A. And in fact I think he treats everybody the same. At times that is intense.

Q. But the point is everybody is treated the same?

A. I felt so.

Q. It is your opinion that he treated everybody the same?

A. I believe so, yes, sir.

Q. All right. When Teresa Harris left the employment of Forklift Systems, were you there the day that [p. 169] she got her check and left?

A. I was there the day she left. I don't know remember if there were checks involved that day or not.

Q. Did she say anything to you before she left?

A. I believe that I was the last person she spoke to before she left.

Q. At the time that you spoke to her the last time you spoke to her before she walked out of the building, who was in Charles Hardy's office?

A. I don't know their name. I know who they are. It was a big blue pick-up truck from one of the battery companies. Now, I believe it was David Gary is the name of the man, but I am not sure of that.

Q. And was the man or that business, are they in competition with Cellular Power, Teresa Harris's husband's business?

A. They are also a battery company so they would be competition, yes.

Q. Did Teresa Harris make a comment to you before she left?

A. Yes, she did.

Q. What was the comment she made?

A. I was in the warehouse, as I call it, out back. And Teresa came through and she was visibly upset, and she told me that she just didn't have to take this. She [p. 170] couldn't take this any more.

Q. How did you interpret that? What did you interpret that to mean? Did you relate it to the man in Charles Hardy's office?

A. On my own I did.

Q. Well, that's I am talking about you.

A. Yes, sir.

Q. How did you – what was on your own how did you relate it to the man in Charles Hardy's office?

A. Well, I had seen the truck outside.

Q. All right.

A. And then I saw that Charles' door was closed or locked or whatever.

Q. All right.

A. And that was not normal.

Q. All right.

A. So I knew that something was going on in there. And I felt just based on what was going on at that moment that that was just not acceptable.

Q. To Teresa Harris?

A. That's right.

Q. The straw that broke the camel's back?

A. That's the way I remember it, yes.

MR. CHERNAU: You may ask.

[p. 171] CROSS EXAMINATION
BY MR. VENICK:

Q. Your recollection is not based upon anything that Mrs. Harris told you, is it?

A. Other than she couldn't take this any more.

Q. She just came to you and said, "I can't take this any more" and was crying if I recall correctly?

A. She was close to crying. She was shaking real bad. She was very upset.

Q. You just made the jump that it had something to do with those trucks; is that right?

A. That was my opinion, yes.

Q. Not based on anything she told you?

A. She did not say, "That blue truck is out there; I am not putting up with this" and leave, no.

Q. Now, you and Mrs. Harris weren't together in the office every day in the same place eight hours a day, were you?

A. Somewhat. We were in the same building, yes, sir.

Q. I understand that. But you were the parts manager; is that right?

A. That's correct.

Q. And if I recall the way Forklift Systems is laid out, parts department as you are facing is over to the [p. 172] right, isn't it?

A. It is a separate room is the way I always called it.

Q. Separate room and separate door?

A. Yes, sir.

Q. And Ms. Harris's office

A. Was in the other room.

Q. Was in the main room. So although you would be in the same building, you wouldn't necessarily occupy the same work space?

A. No, sir.

Q. So consequently, the things that Mr. Hardy may have done or may have said to her, you wouldn't necessarily have any knowledge about, would you?

A. This is true.

Q. Now, I believe you left Forklift Systems in November of '89; is that right?

A. December of '89, yes, sir.

Q. And is it not also true that in fact you had met with Mr. Chernau about this case prior to the time you left?

A. I don't know if - I don't. Probably. I know I have talked with Mr. Chernau several times in regards to many cases.

Q. I see. Okay. But you don't have any specific [p. 173] recollection of meeting with Mr. Chernau prior to the time you left Forklift Systems about this particular case?

A. To be honest, I am not that sure what this particular case is. I mean, I don't know.

Q. I understand.

A. This is the first time I have been to court that nobody said we are going about this or we are going about that.

Q. Now, isn't it true that Teresa Harris had in fact, talked to you prior to this event you described on October first, '87, about being very upset about the way Charles Hardy was treating her?

A. On occasions that is correct.

Q. And wasn't one of those occasions some time in July or August of '87, a couple of months before she left in fact?

A. As far as date, I don't know. As far as conversation, I agree.

Q. And during that conversation she basically complained about the things that Charles Hardy was saying to her and the way he was treating her?

A. She conveyed the impression that Charles was mistreating her.

Q. Okay. And in fact she told you that she was going to turn in her notice and resign in August, didn't [p. 174] she?

A. She did.

Q. I understand that you are going to be leaving your employment some time soon; is that right?

A. No. I wouldn't say that.

Q. No, don't think so?

A. That's possible. That is a possibility, yes.

Q. And figure if you leave your employment you might ask Mr. Hardy for a recommendation?

A. I have not.

Q. I know. I said you would?

A. Not necessarily.

Q. Don't think so, huh?

MR. VENICK: Excuse me for one second, Your Honor.

Q. Do you recall Mr. Hardy ever calling you a dumbass?

A. On occasions I have been called several things. I in turn have called him several things.

Q. That was in the course of conversation between you and he?

A. Yes.

Q. Not in public?

A. Oh, it was in public.

Q. Okay.

[p. 175] MR. VENICK: I don't have any further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. CHERNAU:

Q. Just one point and I am not going to belabor this at all. You made an interesting comment. You say you have testified in some of the cases with - well, we had one case with that fellow that -

A. Carl Myers, yes, sir.

Q. Did you testify in any of the other cases with Cellular Power? I can't even remember.

A. No, sir, the Cellular Power I wasn't any part of that.

Q. I know. Did you testify in any trials?

A. No, sir.

Q. You say this is the first case that somebody didn't tell you we are going here or going there; is that correct?

A. That's right. Other than I was told seventh floor, Judge Sandidge.

Q. And I also told you that I was going to put you on the witness stand, send you a subpoena and ask you what the conditions were at Forklift?

A. That's true.

Q. Thank you very much for coming up.

[p. 176] THE WITNESS: Am I through?

THE COURT: I don't know.

MR. VENICK: Nothing further, Your Honor.

THE COURT: Yes, you are through.

MR. CHERNAU: Can I let him leave?

MR. VENICK: Your witness.

MR. CHERNAU: Well, do you want him any more?

MR. VENICK: I don't care.

MR. CHERNAU: You may leave.

(WITNESS EXCUSED.)

* * *

THE COURT: Next witness.

ANGELA HICKS SHAPIRO was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHERNAU:

THE COURT: Have a seat right here. Once seated, state your full name.

THE WITNESS: Angela Hicks Shapiro.

Q. Where are you employed?

A. WKRM Radio, Columbia, Tennessee.

Q. Do you live in Columbia?

A. Yes, sir.

Q. How long were you employed at Forklift Systems?

A. Roughly three months.

[p. 177] Q. Do you recall what three months?

A. No, sir, I surely don't.

Q. Do you recall what year it was? Eighty-seven?

A. Eighty-seven.

Q. Eighty-seven. And did you quit your job out there?

A. It was more of a mutual decision. It was a discussion and an agreement that I would leave the firm.

Q. Why did you leave?

A. Several reasons. The initial reason that we were I was called into the office is I had a disagreement with

Stephanie Vanns, the secretary, whereas we discussed further the problems that I was incurring at the company and decided that it would be best that I just leave.

Q. Did any of your problems relate to Teresa Harris?

A. Yes, they did.

Q. What kind of problems?

A. Just personal discrepancies. Just general things. Couldn't get along, rudeness, things of that nature.

Q. On the part of Teresa Harris?

A. Yes.

Q. During the three months you were there, how would you describe the environment out there? Would you [p. 178] describe it as a place where there were a lot of jokes and levity going on?

A. Most certainly. A lot of jokes and cracks up. Business atmosphere; however, there was a lot of joking and cracking going on.

Q. Did you find anything that Mr. Hardy or anyone else out there said offensive to you?

A. No.

Q. Did you think it was a sexually hostile environment out there?

A. In no way.

Q. In no way?

A. In no way.

MR. CHERNAU: You may ask.

CROSS EXAMINATION

BY MR. VENICK:

Q. Good morning, Ms. Hicks.

A. Good morning.

Q. You don't really care for Teresa Harris, do you?

A. She doesn't bother me one way or the other.

Q. That's not what you told me on the telephone. Didn't you tell me that you didn't care for her?

A. If you asked me, I may have.

Q. Is that your testimony today?

[p. 179] A. That I don't care for Teresa Harris.

Q. As I take your testimony you were given the choice of resign or be fired?

A. No.

Q. That's not the case?

A. No, it was a discussion between myself and Mr. Hardy's daughter, the office manager.

Q. That wasn't my question. Were you given a choice to resign or be fired?

A. No, not to the best of my knowledge.

Q. You blame Teresa Harris for you resigning, as you like to put it?

A. No.

Q. And it is your testimony that you never saw Mr. Hardy make any kind of comments or any kind of statements that affected your physical attributes as a woman; is that your testimony?

A. Yes.

Q. Never made any comments about your breasts?

A. Lots of people make comments about my breasts.

Q. I am not asking about lots of people. I am asking about Mr. Hardy.

A. Not any that were offensive, no.

Q. What kind of comments did he make?

A. I couldn't tell you. None that I am aware of. [p. 180] That's been some time ago.

Q. You can't recall?

A. Mr. Hardy - not to the best of my knowledge Mr. Hardy never made any comments about my breasts.

Q. You don't recall Mr. Hardy asking you or any other females to remove coins from his pockets?

A. Heavens no.

Q. Heavens no? Never saw that?

A. No.

Q. And you never saw Mr. Hardy throw coins on the floor and ask female employees to pick them up?

A. No.

Q. Ms. Hicks-Shapiro, understand you are under oath?

A. Yes.

Q. You understand that if you don't tell the truth, you are subject to perjury?

A. Yes.

Q. No further questions.

REDIRECT EXAMINATION

BY MR. CHERNAU:

Q. Now that he's explained that to you, would your answers be any different?

A. No, sir, I have answered that to the best of my knowledge.

[p. 181] MR. CHERNAU: If the Court doesn't need the witness, the witness is finished.

Does anyone object to the witness remaining in the courtroom to hear the rest of the case? Is that all right with Your Honor?

MR. VENICK: We object.

MR. CHERNAU: On what grounds?

MR. VENICK: You asked if we objected. We object.

THE COURT: Next witness, please.

(WITNESS EXCUSED.)

* * *

MR. CHERNAU: That's the Defendant's proof.

THE COURT: Any rebuttal proofs, Mr. Venick?

MR. VENICK: Yes, Your Honor.

THE COURT: They have rested their proofs.

PLAINTIFF'S REBUTTAL

THE COURT: We are in rebuttal proofs. Don't put on anything you should have put on in chief. Just to rebut new stuff.

MR. VENICK: I am going to try hard not to, Your Honor.

ALBERT LYTER, III, was called, and being duly sworn, was examined and testified as follows:

[p. 182] DIRECT EXAMINATION

BY MR. VENICK:

THE COURT: Have a seat and then state your full name.

MR. VENICK: Mr. Lyter is being offered as an expert witness. I will read Mr. Lyter's qualifications to the Court.

THE COURT: Well, spell your last name.

THE WITNESS: L-Y-T-E-R. Name is Albert H. Lyter, III.

Q. Mr. Lyter's educational background is he has a Bachelor of Science in Chemistry from Oklahoma City University. Has a Bachelor of Science in Biology from Oklahoma City University, and an M.S. in Forensic Science from George Washington University.

He has had additional training in questioned document examination from the United States Secret Service, and since September 1981 to present he has been President and Chief Scientific Officer of Federal Forensic Associates, Inc., in which he is engaged in examination, consultation, training, research and testimony in all areas of forensic science including ink and paper analysis, trace evidence, drug analysis, blood alcohol, serology and questioned document examination.

From January 1975 to September '81 he was a [p. 183] forensic chemist with the U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, National Laboratory Center, Rockville, Maryland, where he engaged in consultation, examination, training, research and testimony as service to federal and state law enforcement agencies. He has been qualified as an expert in federal, state and military courts in over 20 states and abroad.

He is an instructor at the FBI Academy, Federal Law Enforcement Training Center, Naval Investigative Service, Air Force Office of Special Investigation, United States Secret Service and colleges and universities.

He is a member of the American Academy of Forensic Sciences and the International Association of Forensic Sciences. Has a number of publications to his credit including "Comparison of Paper Samples" in the *IAI News*, "Analysis of Ball Pen Ink by High Pressure Liquid Chromatography" in the *Journal of Forensic Science*, "Comparison of Typewritten Carbon Paper Impressions" in the *Journal of Forensic Science*, "Analysis of Writing Ink", a chapter in the book *HPLC in Forensic Science*, "Ink Analysis" in *Trial* magazine, and "A High Performance of

Liquid Chromatographic Study of Seven Common Explosive Materials" in the *Journal of Forensic Science*.

He has participated in the Mormon will case of Howard Hughes, the corruption trial of the city inspectors [p. 184] in the City of Chicago, the slander trial against Dan Rather and CBS, and the bombing of the Police Commissioner of Bessemer, Alabama.

We would like to offer Mr. Lyter as an expert in the area of questioned document examination.

THE COURT: Any objection?

MR. CHERNAU: Heavens no.

THE COURT: Okay.

Q. Okay, Mr. Lyter, if you will please read, pursuant to local court rule, your testimony.

A. "Comes the Plaintiff, Teresa Harris, by and through her counsel, pursuant to Rule 12(c)(6)(c), Local Rules of the Middle District of Tennessee, who submits the direct testimony of Albert H Lyter, III, forensic chemist:

In March 1990 I examined certain documents from the personnel file of Teresa Harris maintained by the defendant and various entries contained in the 1987 desk calendar of Charles Hardy, President of the Defendant, Forklift Systems, Inc. The documents I examined were provided to me by Stanley Chernau, Defendant's counsel, in his office.

I examined the following 30 different entries from Mr. Hardy's desk calendar: 1-5, 1-8, 1-15, 1-29, 2-2, 4-30,

5-7, 5-25, 5-26, 5-27, 5-29, 6-1, 6-22, 6-30, 8-18, 9-1, 9-8, 9-18, 9-22, 9-29, 10-1, 10-2, 10-9, 10-17," [p. 185] "10-21, 11-13, 11-16, 11-23, 11-25, and 12-30.

I selected entries which spanned the dates of the entire calendar as well as certain entries which I was requested to examine in particular.

I also examined two separate documents taken from Teresa Harris's personnel file (A and C below) and one from the personnel file of Kathy Kernell (B below).

A. A sheet of paper approximately six by eight inches bearing the heading Aaron Rents with a note dated 6-1-87.

B. A sheet of paper approximately six by eight inches bearing the heading Aaron Rents with a note dated 2-23-88.

C. A sheet of paper approximately six by eight inches bearing the heading Advance with a note dated 8-18-87.

A chemical and physical examination was conducted" -

THE COURT: Stop right there. Which one of the exhibits that are in the thing were the last 6 by 8 sheets so that I can follow his upcoming statements?

MR. VENICK: Yes, Your Honor.

THE COURT: And I might point out that all of these things on the desk calendar that he examined have not been made part of this record.

[p. 186] MR. VENICK: Yes, Your Honor, we asked to admit them.

THE COURT: There is only a portion of them here. Did you ask for the whole desk calendar?

MR. CHERNAU: He asked for the entire desk calendar. I said I wouldn't give it to him and you ruled that I would give him those pages that he first handed up and examined Mr. Hardy about. That was the only part of the desk calendar that was supposed to be examined.

THE COURT: All right.

MR. VENICK: Your Honor, I believe it is Exhibits 6, 7, and 8. I believe that's correct

THE COURT: How about Exhibit 5?

MR. VENICK: That's correct.

THE COURT: Okay, go ahead.

A. "A chemical and physical examination was conducted upon the above-referenced exhibits. The physical examination included review of the documents with the unaided eye as well as with magnification ranging from 10 to 30X. The chemical examination included the use of a technique called thin layer chromatography (TLC). TLC is used to separate the components of the various ink formulations, thus making a comparison between samples, and with standard ink formulations possible. The use of reflectance spectrophotometry or densitometry was also" [p. 187] "used as a means of quantitating the various components of the ink formulations. By measuring the amounts of the various ink components, a relatively aging analysis was possible using certain examined

entries as comparison standards indicative of a specific preparation date. The results of these analyses are as follows:

1. Among the exhibits a total of six blue ball point ink formulations and four black ball pen ink formulations were found.

2. All of these ink formulations are similar to standard ink formulations which were available at the dates appearing on the exhibits.

3. One blue ball pen ink formulation was only found on five different entries in Charles Hardy's 1987 desk calendar: 5-25, 5-26, 5-27, 6-1 and from the entry dated 8-18 the words "recept. quit/discussed situation/ must change, promised it would".

4. A relative aging examination was conducted upon the following dated entries from Charles Hardy's 1987 desk calendar: 1-15, 1-29, 5-29, 8-18 the words "terminate if doesn't", 9-29, 10-9, 11-13, and 11-25; and the sheet of paper approximately 6 by 8 bearing the heading Aaron Rents with a note dated 6-1-87 taken from Teresa Harris's personnel file. The results indicate a difference in preparation time between the document dated 6-1-87 and" [p. 188] "that portion of the entry dated 8-18 including the words "terminate if doesn't" and the other dated entries.

Based upon my examination of the above - described documents I am of the opinion that the entries in Charles Hardy's 1987 desk calendar dated 5-25, 5-26, 5-27, 6-1 and from the entry dated 8-18 the words "recept. quit - discussed situation - must change, promised it would" were

added to the calendar on a date other than the date appearing on the entry.

With respect to that portion of the 8-18 entry on Charles Hardy's 1987 desk calendar including the words "terminate if doesn't" and the document from Teresa Harris's personnel file with the heading Aaron Rents dated 6-1-87, I am of the opinion that these entries were written sometime after January 1, 1988, and not on the date appearing on the entry."

Q. Now, with respect to your testimony, Mr. Lyter, could you please explain for the Court what the process of physical examinations that you went through with respect to these documents?

A. Physical examination was merely an examination of the entire documents by means of the unaided eye as well as with magnification. We were looking here for the various colors and types of writing instruments that might be present in an attempt to try to classify or group [p. 189] together writings that may have been made with the same writing instrument or a similar type writing instrument, and we were looking for various characteristics in the line such as striations, glooping or blobbing that might occur with a ballpoint writing instrument.

Q. What significance is there to the pattern of the preparation of the documents?

A. In documents of this type it is normal practice by individuals to use one of two separate types of preparation. One is to use the same kind of writing instrument to do it in its entirety. In other words, they have a pen

sitting on their desk, carry a pen in their pocket and they will use that pen to make all of the entries.

The other possibility is they may use a number of different pens, in which case there would be no pattern throughout the document. One entry would be made with one kind of ink, the entry on the next page would be made with a totally different kind of ink, and there really wouldn't be any pattern as such.

Q. And what was it you found with respect to these documents with respect to their pattern that was significant to you?

A. The diary in its entirety contained I believe six different kinds of ink of one kind and four of another. [p. 190] However, a majority of those entries were found rotated continuously throughout the document in that you would find the same kind of ink that occurred in the beginning of the document to the end of the document.

The only place that we found this one kind of ink which I reported on the May dated entries and the June first entry as well as an entry on 8-18 which was in fact the second entry in a row, that particular entry contained more than one kind of ink. And the second one as if it was done sequentially was of the same kind of ink used in May. But those were the only entries we found in the diary that contained that kind of ink.

Q. And what is the process of chemical analysis that you have gone through with respect to these documents?

A. Chemical analysis starts by means of removing small portions of the written line. We did this with a

hypodermic-sized hole punch. We then take those samples and do a technique which is called thin layer chromatography, and it in essence results in a separation of the various components of the ink so you can compare one writing with the next to see whether they have the same components or not.

The technique has been found to differentiate between ink formulations or recipes of ink, but it cannot differentiate different batches of ink so that if say two [p. 191] different pens were used of the same type, they would show up being the same ink formulation but not the same pen.

That technique is also the prerequisite for doing quantitative measurements of the amounts of these certain dyes that are present. And as ink gets older or is on the paper longer, the ability to actually extract the ink and these various components will change.

So by measuring the ability of extracting of the dye components in one writing, you can compare it with other writings that we know were done on certain dates or at least not questioned. And if in fact the questioned entry did not compare favorably with those entries, then it would indicate being done at a different time.

Q. And based upon that analysis, what was your conclusion?

A. We found that two entries, one dated 8-18 in the calendar, that was the entry that says "terminate if doesn't", as well as the writing that was found on the Aaron Rents document dated 6-1-87 were comparatively speaking dissimilar to the other entries that were made at

on or about those dates in the calendar dated that way in the calendar. They were in fact similar to entries made at the end of the calendar date. In other words, at the end of 1987, beginning of 1988 and, therefore, not consistent with the dates that appeared on the actual entries or the [p. 192] exhibit.

Q. And, therefore, as you stated, more likely to have been prepared after January first, '88?

A. That's correct.

MR. VENICK: I have no further questions, Your Honor.

CROSS EXAMINATION

BY MR. CHERNAU:

Q. Did you say, sir, that in looking at a situation like this that if there was a number of different pens used and I am not trying; don't hold me technically because I don't know what I am talking about. I am just trying to get to the facts. Using a number of different pens, there would be no pattern? You said - let me help you. Your statement was under normal practice someone carries a pen in his pocket or on his desk. He picks it up and uses it. Then did you say that the use of a number of different pens there wouldn't be that pattern?

A. Not necessarily. There can be a pattern no matter how many different pens are used. For instance, I have seen situations where somebody will take out five different pens and prepare a document at one setting but there is a consistent pattern in the usage of those pens.

Most of the time, as I mentioned, we cannot say it was a specific pen.

[p. 193] Q. Okay, hold that thought just one second. So sometimes you have a pattern with the pattern is that I am using three pens and use one on the same document, two on the same document and three on the same document, but then I start over again and use one, two and three again; is that correct so far?

A. I have seen that pattern, yes.

Q. Isn't that the pattern you just described to me where a number of pens are used in the document but the rotation of use of the pens follows the same pattern?

A. That's correct.

Q. Okay. Now, is it necessary or did you in this case ask Mr. Venick if he had any knowledge of Mr. Hardy's habits in regard to the use of pens?

A. I don't believe I requested because it wasn't necessary.

Q. It wasn't necessary?

A. That's correct.

Q. All right. Why wasn't it necessary?

A. First off we are dealing more with the kinds of ink that are used as opposed to the kind of pens.

Q. Okay, but can we say with pens -

A. Can I finish, please?

Q. Sure, go ahead.

A. We can in fact not distinguish pens, as I said, [p. 194] and there is in fact a number of instances where the same kind of pen may be used and yet different pens of that kind may be used. So we deal almost strictly with the kind of ink that's present on the document.

Q. And then the other things was - I am going to come back to that in a minute. And then the other thing was that you know that they were done at certain dates because at least those things that were done were not questioned. You were only dealing with what was questioned so you assumed that the other things on that date were written on that date?

A. There were assumptions that we made about the preparation date of certain entries, that's correct.

Q. So the assumption that you made was if I showed you a sheet that had one, two, three comments on it and I told you that what I want you to do is tell me about this number three comment, and doing the process that you do you assume that this comment and this comment was made on that date as indicated; isn't that correct?

A. Not necessarily, no.

Q. It is not?

A. That particular situation was not evidenced in this book. What we did was assume that the book was not fabricated in its entirety, and I did find no evidence to indicate that.

[p. 195] Q. Found no evidence to indicate that?

A. To indicate that it was fabricated all at one time.

Q. Well, you are saying fabricated. What do you mean fabricated?

A. Well, in order for there to be entries that span a year, if they were all done at one time then that's a fabrication. In other words, it's not -

Q. Were you asked to look at that?

A. I was asked to look at the document and to determine whether or not there were entries in the diary that were consistent with that date of preparation or inconsistent with that date of preparation.

Q. Were you told then as an assumption that any entry on any particular day on any particular page in that calendar was made on the date indicated, that other things were made when indicated but there were a few things that we don't think were made when indicated and we want you to check those?

A. I was not told specifically that the entries were in fact considered legitimate or non-contentious. However, the visual examination led me to believe that several of those entries were consistent with normal preparation.

Q. Okay. Did Mr. Venick volunteer to you the fact [p. 196] that Mr. Hardy had showed him a desk drawer of pens that he uses at his office?

A. I don't recall.

Q. Did you have any conversation at all at any time?

A. We may have, but I don't specifically recall.

Q. You don't recall any conversation about Mr. Hardy showing Mr. Venick the number of pens that he collects and uses?

A. I do remember him saying that he was a collector of pens, but I don't remember that he said -

Q. But you don't remember the part where he uses them all?

A. No. I don't recall that.

Q. And your testimony is that on these two entries, 8-18 and 6-1, that they according to your tests were not done on the day that they were entered?

A. That's correct.

Q. I have no other questions.

MR. VENICK: Nothing further, Your Honor.
(WITNESS EXCUSED.)

* * *

THE COURT: Next rebuttal witness.

MR. VENICK: Dick Reed, Your Honor.

MR. CHERNAU: Is this are you calling him back [p. 197] as rebuttal?

MR. VENICK: Yes, it is rebuttal testimony.

THE COURT: Get him in here.

MR. CHERNAU: Let's go.

DICK REED was recalled, and having been previously sworn and remaining under oath, was examined and testified as follows:

THE COURT: You are still under oath, Mr. Reed.

DIRECT EXAMINATION

BY MR. VENICK:

Q. Mr. Reed, do you recall meeting with Charles Hardy in the fall of 1987 to discuss the situation with Cellular Power Systems and Larry Harris?

A. Meeting with Larry Harris?

Q. Yes.

A. Yes, sir.

Q. Do you recall the purpose of that meeting?

A. Yes. It was mainly to do with Carl Myers, a former employee.

Q. Were there any statements made in that meeting that business between Forklift Systems and Cellular Power Systems was going to stop?

A. Not that I recall, no.

Q. Do you recall meeting with Mr. Hardy prior to the meeting with Mr. Harris during which time Mr. Hardy [p. 198] discussed the need to terminate the business relationship with Cellular Power Systems?

A. To terminate the business relationship?

Q. Right.

A. No, I don't.

Q. Do you recall meeting with Mr. Hardy again prior to the meeting with Mr. Harris in which he discussed with you the necessity of having to terminate Teresa Harris as an employee of Forklift Systems?

A. No, no.

Q. When did you become aware of the termination of the business relationship with Cellular Power Systems?

A. When I saw a copy of a letter written by the sales secretary cancelling the orders.

Q. You had no knowledge prior to that time?

A. Not that we were going to terminate, no.

Q. Or that you had terminated?

A. No, no.

Q. Do you recall a Forklift employee by the name of Angela Hicks?

A. Yes, I do.

Q. What happened with Angela Hicks as far as her employment is concerned?

A. It was terminated.

Q. How do you know it was terminated?

[p. 199] A. Well, I was told it was by -

MR. CHERNAU: I object to this. It is hearsay.

Q. By whom?

MR. CHERNAU: I object to this. It is hearsay.

THE COURT: It could be hearsay and it could not be.

Q. By whom?

A. By the office manager.

THE COURT: Sustained.

MR. VENICK: Your Honor, if I may go a little further.

THE COURT: All right.

Q. That was Kathy Kernell?

A. Yes.

Q. Was Kathy Kernell responsible for disciplining of employees at that time?

A. She was supervising the office personnel at that time, yes.

Q. And her responsibility was to hire and fire employees or to tell them they were hired and fired?

A. Yes.

MR. VENICK: Your Honor, she was an agent.

MR. CHERNAU: Go ahead. It is still hearsay.

THE COURT: Let it in.

MR. VENICK: Thank you, Your Honor.

[p. 200] Q. What was your understanding of why she was terminated?

A. Well, I was called by Kathy on the phone intercom to determine what her work was like and what her

demeanor had been like, and I just gave my opinion. And after that I was told by Kathy she was terminated.

Q. And what was your opinion?

A. I said she was doing satisfactory work.

Q. Were you involved in the termination of an employee by the name of Stephanie Vanns?

A. Yes.

Q. And this is when you were the personnel manager of Forklift Systems; is that right?

A. Right.

Q. Do you recall why she was terminated?

A. Terminated for just general attitude and general work requirements that weren't met.

Q. What did Charles Hardy tell you to do regarding her personnel file?

A. He asked me to review it. Add a couple of items in there that we felt were necessary.

Q. Were those items that you added necessarily true?

A. I wouldn't say so, no.

Q. That was something that Charles Hardy told you [p. 201] directly to do?

A. Yes.

MR. VENICK: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. CHERNAU:

Q. You added something to a personnel file that wasn't true, sir?

A. I said that it was not necessarily true.

Q. Why would you add something to a personnel file that was not necessarily true? You said "we added what we felt was necessary" and then you said not necessarily true. Why would you do that?

A. It is a question of whether it is completely true or was it substantially true.

Q. Carl Myers, when you discussed Carl Myers did it come up in the discussion or did you know from knowledge from anyone else that Carl Myers was an employee of Forklift Systems who had been accused of and admitted taking money?

A. Now, break that down for me. You have got several things in there. I don't understand your question.

Q. All right. Did you ever hear that Carl Myers had stolen money when he was working for Forklift Systems?

A. No, I didn't hear he had stolen money.

Q. So today do you know whether he stole any [p. 202] money?

A. No. To my knowledge he did not steal any money.

Q. So, therefore, you don't know that he admitted that he stole the money?

A. I don't know that.

Q. Do you know that Carl Myers had instituted a suit for commission?

A. At what time did I know that?

Q. Do you now as you sit here know that he had instituted a suit?

A. Yes.

Q. Did you come in from Kentucky to be a witness for that?

A. Yes.

MR. VENICK: I believe he's gone beyond the scope of direct.

MR. CHERNAU: Talking about Carl Myers.

THE COURT: I can't tell yet.

Q. You came in from Kentucky for Carl Myers' case; is that correct?

A. Correct.

Q. Who called and asked you to come in for that?

A., I was subpoenaed.

Q. You were subpoenaed by who?

[p. 203] A. By Teresa.

Q. By Teresa Harris?

A. Or Larry Harris. I have forgotten how the case was set up.

Q. Larry Harris represented Carl Myers, didn't he?

MR. VENICK: That's Larry Wilson.

Q. I'm sorry, Larry Wilson represented Carl Myers in that case?

A. Yes.

Q. And Teresa Harris wasn't involved in that case at all, was she?

A. What do you mean by involved?

Q. This is a case of Carl Myers suing Forklift Systems. What has that got to do with Teresa Harris?

A. I believe she was called as a witness in it.

Q. You believe she was called as a witness by whom?

A. I don't know.

Q. Did she ever go on the witness stand?

A. I don't know.

Q. You were there. Did you see her?

A. I believe she did.

Q. You think that Teresa Harris went into the courtroom and testified?

A. I believe she did.

[p. 204] Q. Well, she didn't. Did you?

A. No, I don't think I did.

Q. I don't have any further questions.

MR. VENICK: No further questions, Your Honor.

(WITNESS EXCUSED.)

* * *

THE COURT: Next rebuttal witness.

MR. VENICK: Call Stephanie Vanns.

THE COURT: All right. If you will call her, please.

MR. CHERNAU: May I go ahead and take that down?

THE COURT: Just cover it up for the time being.

MR. CHERNAU: May I go cover it up?

THE COURT: It bothers you? Cover it up.

STEPHANIE VANNS was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VENICK:

THE COURT: You are still under oath with respect to your testimony in this case; understand?

THE WITNESS: Yes, sir

Q. Ms. Vanns, you have previously testified about some comments that you heard Mr. Hardy make while you were [p. 205] an employee of Forklift Systems?

A. Yes, sir.

Q. Were any of those comments made or directed towards Angela Hicks?

A. Some were, some weren't.

Q. What comments were directed towards Angela Hicks that you can recall?

A. I am sure he probably said about quarter in the pocket.

Q. Do you ever recall Mr. Hardy making any comments about her physical attributes?

A. Pardon me?

Q. Do you ever recall Mr. Hardy making any comments about her physical attributes?

A. Such as in what? I don't understand.

Q. Such as her breasts or any other parts of her body?

A. All the men did.

Q. Mr. Hardy included?

A. I am sure he - I think he said maybe a joke about it.

MR. VENICK: No further questions, Your Honor.

MR. CHERNAU: I have no questions.

(WITNESS EXCUSED.)

* * *

[p. 206] THE COURT: Next witness.

DAVID THOMPSON was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VENICK:

THE COURT: Have a seat and then state your full name.

THE WITNESS: My name is George David Thompson.

Q. You were formerly employed by Forklift Systems?

A. Yes, sir.

Q. What was your position?

A. I was a sales representative.

Q. And you are currently employed at Myers Truck; is that correct?

A. And Caster.

Q. Do you recall having discussions with Teresa Harris about her leaving Forklift Systems in September of 1987?

A. Yeah, we talked about her leaving.

Q. Can you tell the Court why she told you she was leaving?

MR. CHERNAU: Please the Court, what is this rebutting? I object to this.

MR. VENICK: This is rebutting -

MR. CHERNAU: Point of her direct testimony.

[p. 207] It is not rebutting anything.

MR. VENICK: If Mr. Chernau is finished, I will be happy to tell the Court. They say Mrs. Harris left because of a deteriorating business relationship with her husband. That is contradicting my client's theory of the case.

THE COURT: Go ahead. Overrule the objection.

Q. What do you recall her telling you as to why she was leaving?

A. That she was unhappy and that she felt like that she wanted to leave just mainly because she was unhappy and she felt like she wasn't being treated fair.

Q. Did she make any comment to you whatsoever about the deteriorating business relationship between Cellular Power and Forklift Systems?

A. None that I know of.

MR. VENICK: No further questions, Your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. CHERNAU:

Q. Mr. Thompson, do you recall when the EEOC complaint was filed and it was necessary for you to give a statement around May of 1988?

A. Is this when I came to your office?

Q. Yes.

[p. 208] A. Yeah, I do remember that.

Q. Do you recall in answering one of the questions put to you by the EEOC your answer to whether you could verify statements that Charles Hardy had made to Teresa, "Teresa, we are going to the Holiday Inn to negotiate" - they have got rave down here, R-A-V-E, but it is raise. Do you remember that?

A. Yes, I do remember that.

Q. And was -

MR. VENICK: Your Honor, -

Q. I am going to ask you if this is your answer.

MR. VENICK: I believe this is beyond the scope of the direct.

THE COURT: Are you going to make this relevant on some issue?

MR. CHERNAU: I will tell you exactly why it is relevant. The reason it is relevant is that I say all of this came about because of this soured business relationship. She says it was because of a hostile sexual environment.

I am going to get this witness put on by the Plaintiff to prove that there wasn't a sexual hostile environment and that she left just as he says because she was unhappy and because he didn't know about the Cellular problem doesn't mean it didn't exist.

[p. 209] THE COURT: Okay, go ahead.

MR. VENICK: Your Honor, object

THE COURT: I think it is relevant. Go ahead.

BY MR. CHERNAU:

Q. Do you remember this being your answer:

"Charles Hardy, myself and Gordon Coffman, a factory representative, and Teresa Harris on one occasion had lunch at the Executive Inn in Nashville, Tennessee. Part of the luncheon conversation had to do with business and compensation. To the best of my recollection when we were walking out from lunch, I think Teresa said to Charles Hardy, 'When am I going to get a raise?' And she said this in a joking manner. Mr. Hardy then jokingly said to the best of my recollection, 'We'll negotiate your raise at the Holiday Inn.' The statement was a joke. It was taken as a joke and everyone knew it."

A. That's the way I took it.

Q. Right. Then you were asked a question, "What other lewd or sexist remarks have you heard Mr. Hardy make towards complainant?"

And was this your answer, "As I said in answer to question number 1, what Charles Hardy said was a joke and everyone knew it. I do not know of any other remarks"?

MR. VENICK: Your Honor, this document is not being made an exhibit. It is an improper method of examining this witness.

THE COURT: He hasn't disagreed with it yet. If he disagrees with it, he can put it in.

[p. 210] A. At that point there were other things said, but I personally always took them as a joke, okay? I did not answer the question no, there was nothing else said, but I always took what was said as a joke.

Q. And that's what I am trying to establish. Do you recall this being your answer to this question: "Did you ever state to complainant," - that's Teresa Harris then since you knew her as Teresa -

THE COURT: Teresa Lynch.

Q. Excuse me.

"Did you ever state to complainant that if Mr. Hardy or any man talked to your wife the way Mr. Hardy talked to complainant, you wouldn't put up with it?"

Then you've got "Answer on back." Was this your answer:

"I cannot answer yes or no. The reason is that at one time she or her husband asked me the question and I said, 'No, but my wife would not use the kind of language that Teresa uses' "?

A. You need to read that again. I didn't catch the whole drift.

Q. Of the answer?

A. Of where you started.

Q. This was your answer to the question.

A. What was the question?

Q. "Did you ever state to complainant," -

[p. 211] A. Complainant?

Q. Mrs. Lynch-Harris.

A. Ms. Lynch?

Q. "That if Mr. Hardy or any man talked to your wife the way Mr. Hardy talked to complainant that you wouldn't put up with it?"

A. I probably said that.

Q. Did you hear the answer?

A. Did I ever state - that was a question right dead the way I heard it, and I am answering yes, I did state that.

Q. The answer is, "I cannot answer yes or no. The reason is that at one time she or her husband asked me the question and I said, 'No, but my wife would not use the kind of language that Teresa uses' "; is that correct?

A. I didn't say that to Teresa that I remember, but I said that in person that - well, what I said to Teresa was I would not want my wife talked to that way and I wouldn't put up with it, okay? But then I said later, not to Teresa at the time, that my wife does not use that type of language.

Q. All right, the last question. And this is the last question.

THE COURT: You are talking about the type of language that Teresa used?

[p. 212] THE WITNESS: Yes, sir.

Q. Last question. The question is,

"Is there any other information you want to add concerning sexist behavior towards complainant by Mr. Hardy? Please present it."

And this was your response, and I am going to ask you if it was accurate.

"I like Teresa Harris and I am not on anyone's side in this case. However, there is no question that the statement about the Holiday Inn was a joke and she knew it. I do not know about any other remarks."

A. Yes, I said that.

Q. Thank you.

MR. VENICK: No further questions, Your Honor

(WITNESS EXCUSED.)

* * *

MR. VENICK: Can we take a short break, Your Honor?

THE COURT: Let's move on. Do you have another witness on rebuttal proof? I am trying to close the proofs altogether.

MR. VENICK: Yes, Your Honor. One second.

THE COURT: All right. If you really want one, I will be glad to. My insistence was get the proofs closed. If you really want one, just insist a little more and I can be persuaded.

[p. 213] KIM HAMPTON was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VENICK:

THE COURT: Once seated, state your full name.

THE WITNESS: Kimberly Dawn Hampton.

Q. Miss Hampton, you were formerly employed at Forklift Systems; isn't that right?

A. Yes.

Q. Actually technically you were employed by AmTemps who placed you at Forklift Systems?

A. Right.

Q. AmTemps is a temporary service; is that correct?

A. Yes.

Q. How long did you stay there?

A. I was there two months.

Q. What did you do there?

A. I was receptionist.

Q. Why did you leave Forklift Systems?

THE COURT: Well, what period of time was she there? Could have been two months in 1990.

MR. VENICK: I am so familiar with this case, Your Honor.

THE COURT: All right.

[p. 214] Q. When were you there, which two are we talking about?

A. I think it was July to the end of August in '88.

Q. How about '87?

A. It may have been '87. It's been a couple of years so I am not sure.

THE COURT: Well, let's see. Did you know Teresa Harris, she was then Teresa Lynch?

THE WITNESS: Yes.

THE COURT: Were y'all working there at the same time?

THE WITNESS: Yes.

THE COURT: Proceed.

MR. VENICK: Thank you, Your Honor.

THE COURT: I don't know why y'all didn't think of it.

A. I don't know when it was.

Q. How did you get along with Teresa Harris?

A. Fine. I liked Teresa really.

Q. And you left Forklift Systems voluntarily?

A. Yes.

MR. CHERNAU: Excuse me just a minute, Your Honor. She left. She was a temporary employee. She wasn't an employee of Forklift Systems. She was a [p. 215] temporary.

THE COURT: You were never an employee of Forklift?

THE WITNESS: It was a tried before hired. I was employed through AmTemps.

THE COURT: But you were there. Go ahead.

Q. Did you decide not to continue employment because of any reason of Teresa Harris?

A. No, it wasn't.

Q. And you didn't tell anybody at Forklift that you were leaving because of Teresa Harris?

A. No.

MR. VENICK: No further questions, Your Honor.

MR. CHERNAU: I don't have any questions.

(WITNESS EXCUSED.)

* * *

TERESA HARRIS was recalled, and having been duly sworn and remaining under oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VENICK:

THE COURT: You too are still under oath. Have a seat.

Q. Mrs. Harris, you heard Mr. Hardy testify that he had complained to you on numerous occasions about your [p. 216] job performance?

A. Yes.

Q. You heard that testimony?

A. Yes, sir, I did.

Q. Do you recall Mr. Hardy complaining to you at any time about your job performance other than the one time you testified about with the two forks?

A. Oh, there was the incident about the forks and then in September he sent a memo. September of '87, excuse me. He sent a memo to me in reference to two units that I had put into the Leasing Department and in essence had - said I didn't - I should have not done that. And I disputed him. I wrote a memo back to him.

Q. Outside of those two incidents?

A. No, sir.

Q. Nothing else?

A. No, sir.

Q. What knowledge have you had of any deteriorating business relationship between Cellular Power Systems and Forklift Systems prior to October first of 1987?

A. There wasn't any. We at Cellular Power we had purchase orders dated September 28, 1987.

Q. To whom?

A. To Cellular Power from Forklift Systems.

Q. So you had no knowledge of any deteriorating [p. 217] business relationship?

A. No.

Q. When did you become knowledgeable about the terminated business relationship between Cellular Power and Forklift Systems?

A. We received a letter dated October 7 from - well, let me change. Can I say Larry said? I can't say that?

I saw a letter that we received in October that was dated October 7 that says, "This confirms our telephone conversation at 3:40 p.m. cancelling all orders", and it was signed Stephanie Vanns. It was dated October 7, 1987. That's when I knew about it.

Q. You had heard David Matthews testify about apparently a battery competitor being at Forklift Systems October first, 1987? You heard his testimony?

A. I heard that testimony, yes, sir.

Q. Do you recall there being any kind of battery dealer there that day?

A. There could have been, but I don't recall. That wasn't something that would upset me. I had dealt with competitors. I had issued purchase orders with Larry's competitors and I had gone to lunch with Larry's competitors. You know, it would be foolish of me to think that Larry Harris is going to get every battery order in [p. 218] Nashville. That's not going to happen. We have got competition.

I also I was friends with people in the lift truck, you know David and -

Q. David Gary?

A. No, you know you are not your competition's enemy and they weren't my enemies. I dealt with them.

Q. Why were you upset then on October first, '87?

A. I was leaving a job that I absolutely loved. I loved working in the lift truck business.

MR. CHERNAU: What are we rebutting now? She said that on direct.

THE COURT: You just reaffirm your prior testimony [sic] you liked the job?

THE WITNESS: I loved it, and I didn't leave because there was anybody there.

THE COURT: Okay. Have a seat, Mr. Chernau. Next question, Mr. Venick.

MR. VENICK: No further questions, Your Honor.

THE COURT: All right, cross examine.

MR. CHERNAU: I don't have any further.

(WITNESS EXCUSED.)

* * *

MR. VENICK: I want to take a five-minute break.

[p. 219] (A short recess was taken.)

LARRY HARRIS was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VENICK:

THE COURT: Have a seat and then state your full name.

THE WITNESS: Larry Harris.

Q. Mr. Harris, you are married to Teresa Harris?

A. Yes, I am.

Q. And you are currently involved in a business called Metro Material Handling?

A. That's correct.

Q. Is that a successor to Cellular Power?

A. Not a successor. It is a separate company.

Q. Cellular Power still exists?

A. Right.

Q. There's been some testimony today that you had been informed by Charles Hardy in July, August, September of 1987 about his complaints about service that your business was providing to Forklift Systems; is that true?

A. No, sir, I was not aware of that. I was never told that.

Q. Never received any letters from Mr. Hardy to that effect?

[p. 220] A. No.

Q. Never had any conversations with him to that effect?

A. No, sir, I have not.

Q. So did you have any knowledge prior to October 7, 1987, that you had a deteriorating business relationship with Forklift Systems?

A. No, sir. Not until that time.

Q. There's also been testimony today that you were verbally informed on September 29, 1987, that all orders from Forklift Systems to Cellular Power would cease. Did that occur?

A. No, it did not.

Q. When in fact was the first time that you learned that the business relationship between Forklift Systems and Cellular Power was over?

A. It was either October 6 or 7 I received a call from Stephanie Vanns of Forklift Systems telling me the orders had been cancelled.

Q. And then you received a letter?

A. Yes.

MR. VENICK: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. CHERNAU:

Q. Mr. Harris, do you remember the case you [p. 221] testified to in Chancery Court when we sued you on the note?

A. I remember, yes.

Q. Do you remember covering the relationship that you had with Charles Hardy?

A. I'm sorry, I don't understand your question.

Q. Do you remember being asked any questions concerning the business relationship between you, Cellular Power and Charles Hardy?

A. I am sure I was asked questions, but I don't remember what they were specifically.

Q. Well, do you remember whether or not we were talking about Charles Hardy being unhappy with the way you were running the business?

A. No, sir, I don't recall being asked that.

Q. You don't recall being asked?

A. No.

Q. Do you recall any situation regarding whether or not you and your wife could take a trip that she won and Charles Hardy said no because he wanted you in that office running that business? Do you recall anything about that?

A. No, sir.

Q. Do you recall any questions put to you and answers about Carl Myers?

A. Specifically, no.

[p. 222] Q. Okay. Do you recall any conversation at any time - forget the courtroom - with Mr. Hardy about him telling you don't hire Carl Myers; he stole money from us?

A. I remember having a conversation about Carl Myers, but I don't remember him saying he had stolen money from him.

Q. Do you remember him saying don't hire Carl Myers because we can't do business with Cellular?

A. No, sir.

Q. Okay. I don't have any more questions.

MR. VENICK: Nothing further, Your Honor
(WITNESS EXCUSED.)

• • •

THE COURT: That's the end of his rebuttal proofs. That's the end of the proofs.

MR. CHERNAU: I would like at this time at the end of the proof to renew the motion I made at the end of Plaintiff's proof.

THE COURT: Well, I will take it under advisement. Each one of you may file a written argument. If you so choose, do so in five days. Anything else?

MR. CHERNAU: I might ask a very simple question. Today is - what is today?

THE COURT: Monday. Tuesday, Wednesday, Thursday, Friday. Have it filed by the end of business [p. 223] Monday. A week from today will be fine.

MR. CHERNAU: All right.

THE COURT: Okay, anything else?

MR. CHERNAU: I have nothing else for the defense.

MR. VENICK: No, Your Honor. Thank you.

(Court was adjourned.)

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[p. 224] REPORTER'S CERTIFICATE

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, Cathy Boone Leigh, Court Reporter with offices at 126 Babbs Drive, P. O. Box 571, Joelton, Tennessee, do hereby certify:

That I reported the hearing in the matter of HARRIS VS. FORKLIFT SYSTEMS, being Case No. 3:89-0557, on July 23, 1990; that said proceedings were reduced to typewritten form by me; and that the foregoing transcript (Volumes 1 and 2, pages 1 through 223) is a true and accurate record of said proceedings to the best of my skills and ability.

Further, that I am not kin to any of the parties involved therein nor their counsel, and I have no financial or otherwise interest in the outcome of these proceedings whatsoever.

This the 8th day of August, 1990.

/s/ Cathy Boone Leigh
Cathy Boone Leigh
Court Reporter

[p. 225] CERTIFICATE OF THE COURT

I, KENT SANDIDGE, III, Magistrate of the United States District Court for the Middle District of Tennessee, do hereby certify that I have read the foregoing transcript in the matter of HARRIS VS. FORKLIFT SYSTEMS held in open court on July 23, 1990, and have found the same to be a true and accurate transcription of the proceedings.

JUDGE
